CONFERENCE | PROCEEDINGS

the extension of legal services to the poor

SPONSORED BY
U. S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Welfare Administration
Office of Juvenile Delinquency and Youth Development

November 12, 13, 14, 1964
Washington, D. C.

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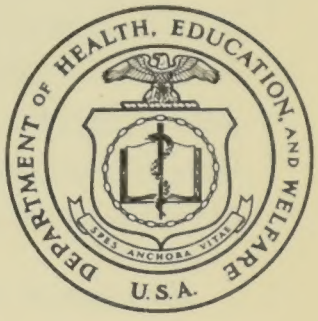

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The proceedings were edited by Jeanette Stats, Consultant to the Office of Juvenile Delinquency and Youth Development, Welfare Administration, Department of Health, Education, and Welfare.

The introduction to the proceedings was written by John G. Murphy, Jr., Conference Coordinator. The introductions and summaries of the panel discussions were written by Mr. Murphy; Dr. Jack Otis, Deputy Director of the Office of Juvenile Delinquency and Youth Development; Jeanette Stats; Joel Cohen and Jane Handler, Office of the General Counsel, DHEW.

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FOREWORD

Efforts to provide services for the neediest segment of our population require the knowledge and help of various professions, such as the law, social work, medicine, and psychiatry. Each profession presently tends to provide its services in isolation from the others since each is directed toward dealing with specific problems of people in a specific context.

However, the problems of people do not occur in a fragmentary way but are so complex that they often require the collaboration of members of several different professions.

Lawyers and social workers especially need to combine their efforts in helping to resolve the problems of the poor, because in our society many people have legal and social problems that are intertwined.

The Conference on the Extension of Legal Services to the Poor was designed to facilitate cooperation between members of these two professions. By combining the talents of lawyers and social workers along with social scientists, we hope to speed the time when our growing concern for the harsh problems of the indigent expresses itself in more effective joint programs in our cities, counties, and States.

We appreciate the time and energy devoted by distinguished members of both professions in this search for knowledge and its implementation. We look forward to a continuation of this effort until "equal justice under the law" has become a reality for those who live in poverty, with the hope that equal justice will contribute markedly to the alleviation of their destitute circumstances.

ELLEN WINSTON,
U.S. Commissioner of Welfare.

ACKNOWLEDGMENTS

Our thanks go to the many talented people who gave so freely of their skill and knowledge to make the Conference on the Extension of Legal Services to the Poor a creative forum. The meeting was, we feel, eloquent testimony to the rising national concern as to the necessity of assuring the disadvantaged competent legal advice, advocacy, and representation.

To those distinguished lawyers, teachers, social workers, and social scientists, whose thoughtful words sparked the far-reaching discussions that characterized this meeting—our deepest thanks. Their papers, which comprise the main body of these proceedings, will, we are confident, provide continuing impetus to the quickening interest in new ways to bring the protection of the law to the poor.

Among the many organizations who cooperated in this conference, special mention should be made of the particular assistance in planning given so generously by the National Legal Aid and Defender Association; Mobilization for Youth, New York; the legal services unit of Community Progress, Inc., of New Haven; and the Action for Boston Community Development legal services program. Also, the assistance of the President's Committee on Juvenile Delinquency and Youth Crime is warmly appreciated.

We have a keen sense of awareness that without the creative participation and articulate interest of the conference participants who gathered in Washington from all over the Nation, this meeting would not have been the meaningful occasion that we believe it was.

BERNARD RUSSELL,
Director,
Office of Juvenile Delinquency and Youth Development.

INTRODUCTION TO CONFERENCE PROCEEDINGS

The papers reprinted in this publication were presented at the Conference on the Extension of Legal Services to the Poor, held in Washington, D.C., on November 12, 13, and 14, 1964, under the sponsorship of the Office of Juvenile Delinquency and Youth Development, Welfare Administration, U.S. Department of Health, Education, and Welfare. Responsibility for the organization and administration of the Conference program lay with the Office of Juvenile Delinquency and Youth Development in cooperation with the Office of General Counsel of the Department of Health, Education, and Welfare.

The addresses of the Honorable Nicholas deB. Katzenbach, Attorney General of the United States and Chairman of the President's Committee on Juvenile Delinquency and Youth Crime, and Dr. Ellen Winston, Commissioner of Welfare, comprise the opening chapter of this volume. The papers of panelists appear in the order of their presentation. The introduction and summaries appended to the chapters reflect the most salient points raised in the course of lively informal discussions after each of the panel presentations and during the workshop meetings on the final day of the conference.

The Conference resulted from various experiences of the Office of Juvenile Delinquency and the desire of the Welfare Administration to explore the relationship of the law to social welfare problems such as the uses of legal representation in juvenile courts, in landlord-tenant relationships, and in adoption and family problems. There was also a growing awareness that significant social changes are often the result of changes in the law and of the advocacy and representation of lawyers in the courts. The involvement of social workers and lawyers in many social problems, with the necessity for greater understanding between the two professions, served also as a stimulus.

The Conference, therefore, placed specific but not exclusive emphasis on experimental activity of the legal profession in civil law in certain projects, such as New York's Mobilization for Youth, for which the Department of Health, Education, and Welfare and other Federal, State, local, and private agencies have provided supporting funds. These comprehensive community action programs for the prevention and control of juvenile delinquency are few in number and vary in form. They provide social, educational, recreational, vocational, or, in limited instances, legal services, or a combination of these, often

operated from service centers located in a defined low-income neighborhood or "target area."

The war against poverty, through the establishment of community action programs under the Economic Opportunity Act of 1964 and the continuation of anti-delinquency and other projects under the direction of various government and private agencies, is rightly viewed as a war on the totality of the adverse societal climate which surrounds the indigent citizen and contributes to the perpetuation of his poverty and dependence. Insofar as this war treats of the whole man, its prosecution cannot be the duty of any single discipline, profession or segment of a profession. The syndrome of poverty and disadvantage is not comprised of unrelated fragments of human experience.

The Conference on the Extension of Legal Services was thus convened with the awareness that the effectiveness of traditional social welfare work might be tremendously augmented through utilization of law and advocacy. Underlying this awareness was the perception that the introduction of lawyers into a low-income community prior to those terminal points where, for example, a crime has been committed or a debtor has been evicted or his wages garnisheed might prevent these conditions from arising. Little doubt exists of the relation between the disabilities of ignorance, sickness, aging, economic depression, family breakdown, child abuse and delinquency (conditions to which welfare agencies have traditionally addressed themselves) and the ultimate confrontation of the low-income individual with the law, as either a criminal or the subject of a legitimate but unfairly weighted civil process.

The Conference, therefore, posed an opportunity for lawyers and social workers to explore the possibilities for joint or cooperative action in areas of mutual concern.

Beyond this purpose, the Conference provided an opportunity to examine the potential role of the legal profession in effecting social change. The quickening devotion of the legal profession to adequate protection of the rights of indigents accused of crime will not, in itself, effect such change. The majority of persons indicted, rich or poor, are guilty under traditional concepts of wrongdoing. Insuring that these people are not arrested, tried, imprisoned or otherwise treated arbitrarily will not alter the fundamental community conditions in which crime breeds. The timely intercession of a lawyer will, especially in cases where the fruit of his effort is the freedom of an innocent man, contribute enormously to the creation of respect and appreciation for the law on the part of the poor community. This development must be pursued vigorously. Yet the activity of the legal profession in behalf of the criminal accused must not be mistaken for something more than a palliative; it eases but it does not cure.

So too is it with the attention given to date to the civil legal problems of the poor. Few of the men and women who have done battle for civil legal aid will disagree that limitations on manpower and money have prevented their service from reaching all who need it when they need it. This feeling is typified in the statement that in an increasingly populous technological society, traditional legal aid is waging a static war, a holding action which, despite the highest form of inspiration, manages only to treat the symptoms, not the causes, of social and economic dislocation. New action programs such as those discussed by Panel II, reproduced in these proceedings, and those established or to be established under public and private auspices, may provide new ways to get at the causes.

The Nation's law schools are working to develop men and facilities for greater action and research, dedicated not only to new legislation, but more significantly to the practical realization of rights already conferred by law. The dialogue begun at this conference may well develop further possibilities for the creative application of the law to the frustrating problems of the impoverished one-fifth of the Nation.

Certainly it was with that hope that the Welfare Administration drew lawyers, judges, professors, students, social workers, and personnel of key State, Federal, and local public and voluntary agencies together to consider the problems and remedies developed in the following pages. The response of these guests to the spirit of fresh inquiry in which the Conference was convoked was most gratifying to the sponsoring agency; it reflects an urge to new and greater action on the part of all the professional communities which were represented, and articulates a basic optimism among men of distinctly different backgrounds and experience that the misery and dependence in our midst can be defeated.

The views expressed in this Conference report do not necessarily reflect the position and policy of the Welfare Administration; that they were expressed in this forum, however, does reflect the conviction that men and women of all professions need each other's assistance in the struggle to end the human blight which economic conditions no longer compel, and to create a nation in which every citizen has access to that independence and dignity for which the law has so long stood sentinel.

SECTION I

Welcome Address

Ellen Winston
Commissioner of Welfare
U.S. Department of Health,
Education, and Welfare

Luncheon Address

Nicholas deB. Katzenbach
Attorney General of the
United States;
Chairman
President's Committee on Juvenile
Delinquency and Youth Crime

WELCOME ADDRESS

ELLEN WINSTON
Commissioner of Welfare
U.S. Department of Health, Education, and Welfare

In behalf of the Department of Health, Education, and Welfare, the Welfare Administration as a whole and the Office of Juvenile Delinquency and Youth Development in particular, I welcome you to Washington and to this important Conference.

The purpose of this Conference, to find more effective methods of meeting the legal needs of the poor, deals with a problem that is of mounting importance in our increasingly complex society and bureaucratic approaches. The fifth of the Nation who lack sufficient income to meet their day-by-day needs adequately have no margin for legal expenses and, in all too many communities, measures for helping them are meager or nonexistent, despite the increasing importance of such protection.

Nor is lack of money the only reason why the protection of the law is not equally available to all citizens. Lack of educational advantages, which is often the cause of their poverty, is also a cause of their need for, not less, but more, safeguards against injustice and exploitation than are available to more advantaged persons. Closely related is the widespread criticism—condemnation—of the poor and illiterate by the affluent for the very factors that hold them in their poverty.

A third reason—and perhaps a major reason for our growing concern—is that, as the country becomes more densely populated and more complex—we inevitably have more laws and regulations—Federal, State, and local. Thus, there are more occasions for people to need legal services. In fact, in the modern society, it is just as important to assure that legal needs will be met when they occur as it is to assure that financial, health, educational and other essential needs will be met.

To use former Attorney General Robert Kennedy's phrase, ". . . poverty is a condition of helplessness. . . ."

It is that particular helplessness in the face of the beguiling sales pitch; easy credit; the fine print in contracts; in leases; the interpretations of the representatives of community agencies; and a hundred other instruments of modern society—it is that general vulnerability that stems from simply not knowing or not understanding the risks as well as the protections that exist in so many areas of a citizen's life with which we are here concerned. And all this is only a shadow of the reality that underlies our theme.

Let me try to put that theme into a slightly larger context. The Welfare Administration of the United States is not a law office, just as many of the guests of this Conference are not lawyers. And yet I believe it is a fair statement to say that the non-lawyers here, in the course of their work, social, educational, or otherwise, in behalf of low-income families and communities, have found, as has the Welfare Administration, that the problems of any given disadvantaged person are all of a piece—connected, derivative of one another, but they are susceptible to realistic assessment only if we try to break them apart to view each facet separately.

So, we do not propose to make social workers out of lawyers, nor do we propose to make lawyers out of social workers. We do propose to address ourselves to that area where our skills, interests, and disciplines meet and merge.

Hopefully, we propose through this Conference to stimulate the dialogue that has already begun as the realization grows, in all of us, that human difficulties in a complex civilization are enormous and that they cannot be dealt with in neatly labeled categories.

This Conference, then, will explore the legal problems of the poor as a part of the broader problem of fulfilling our national commitment to draw the impoverished fifth of the Nation back into the mainstream, to enable them to become valued and participating members of the great society we hope to create.

You will also explore the measures which are available, as well as others which might be made available, to deal with these problems. We need not start from scratch. The public welfare amendments to the Social Security Act, passed in 1962, with their offer of increased Federal aid for a broad range of services to the needy and the near needy, is one of these already available measures. The full potentials of this enlightened legislation are only beginning to be realized and acted upon by the States, to be demanded by the communities.

For example, States could use this measure to see that protective services are available to the estimated half million elderly people—some of whom live in every community—who are no longer fully capable of managing their own affairs. Through programs which

could be developed by public welfare agencies—and these have been spelled out in literature which is readily available—these old people could live safely in their own homes and community, protected against neglect and exploitation. Not only are such programs more economical than commitment to institutional care—which is often the only recourse now—but the terrible shock and tragedy which may accompany such commitment are avoided. Merely by paying 25 percent of the cost, States and localities could make these protective services available to all who need them.

Another measure of tremendous importance is the strengthening of the laws relating to child abuse. Conservative estimates indicate that every year at least 10,000 young and helpless children are injured, sometimes fatally, by their parents or other caretakers. To date, about a third of the States have adopted some form of legislation for reporting on the physical abuse of children along the lines developed by the Children's Bureau with the cooperation of expert consultants. Certainly, we need to explore the whole question of the abused child—not only in terms of better reporting, for this is just one step, but also in terms of prevention and assured protection.

We also need greatly to broaden our efforts to protect older children from harmful or demoralizing situations. In this connection, the attention to legal problems which has characterized the juvenile delinquency demonstration projects has been most encouraging. We are especially indebted to the attorneys connected with these projects because they have not limited their concern to a narrow concept of the legal needs of delinquent youth but have rightly recognized that these needs can only be met as a part of the broader problem of the legal needs of all poor people. While juvenile delinquency problems have always been and continue to be a continuing concern of the Children's Bureau, the special attention these problems have received under the impetus of the Juvenile Delinquency and Youth Offenses Control Act of 1961, which made it possible to establish a special Office of Juvenile Delinquency and Youth Development and to launch these demonstration projects has speeded progress in this crucial area. Yet in this field too, there remains a wide gap between what is and what could be achieved.

I also want to call to the attention of this Conference the legal needs of the poorest of all poor people—the almost 8 million aged and disabled men and women and needy children who receive public assistance. As we develop and improve public welfare programs to serve these and other poor people, doing so under laws and eligibility requirements which vary from State to State, and practices which vary even more widely, we must make doubly sure that people receive their entitlements under these programs in a manner fully pro-

tective of their dignity and self-respect. We must see that their legal rights are not denied to them; that the provisions for their help and protection which are written into our laws and policies are not obviated by practice. In the majority of situations affecting these people across the Nation, this problem does not arise; but we have not fully evaluated or explored corrective mechanisms to take care of such problems when they do arise, or taken steps fully to protect people from any infringements of their rights under these programs.

In brief, present Federal welfare legislation affords States opportunities for dealing more effectively in every jurisdiction with the special needs of all these most vulnerable groups—the aged, the disabled, the children, the youth, and all people who, for a variety of reasons, find themselves dependent upon society for some of the basic essentials of life.

Additional opportunities are embodied in the recently enacted Economic Opportunity Act which offers generous Federal financial support for a large number of community action programs. In planning these programs, we hope legal needs will not be overlooked and we look to you to seek opportunities to participate in the planning and thus assure that legal problems receive consideration in the broader projects which will be developed.

I have cited only a few of the Federal programs and measures which relate to the theme of this Conference. There are many others but these should be sufficient to serve as suggestive reminders that the task before us is not only to review the scope of the problem but, most importantly, to explore remedial measures.

At the outset, I want to assure you that the Federal Government seeks to impose no particular point of view or theory upon your considerations. We view our role as that of catalyst. We know that the ultimate solutions to a community's problems are worked out in the community.

What we would hope for, from your deliberations, would be:

First, a full and free discussion of the many aspects of the problem of legal services as it relates, or fails to relate, to the poor.

Second, the establishment of fresh lines of communication between the various disciplines committed to specific, creative action in behalf of the poor.

Third, the impetus for renewed examination—by the Nation's law schools, by individual attorneys, by social workers and agencies—of their own roles in relation to the subject matter of this Conference.

Fourth, to gain wider understanding of the need to bring all forms of service, including legal, in a more comprehensive way, to the heart of the low-income community—to bring these services close to the people who are most in need of them.

Fifth, most hopefully, to see, in this Conference, the springing up of fresh or new ideas that may result from the chemistry of many intellects and skills brought to bear on the problems we are met to consider.

Sixth, to return to our respective communities better able to deal with our own problems of meeting the legal needs of the poor.

We hope no one has brought inflexible prejudgments to this task. You come from places all across the Nation. Your problems and experiences will differ. Yet you are joined by a mutual purpose which should make your differences fruitful rather than sterile.

In pursuit of that purpose, I would hope that you would feel free to speak your mind—feel free to share your experience—above all, feel welcome, as we, together, explore another facet of essential services to our fellowmen.

ADDRESS

NICHOLAS deB. KATZENBACH
Attorney General of the United States
Chairman, President's Committee on Juvenile Delinquency

It is a pleasure for me to join today with such a distinguished group. And, in view of the general importance of the subject that brings us here, I am pleased to see that this group consists of experts in administration, sociology, welfare, social work and other fields—and not just lawyers. You may, as a result, be able to get something done. Thomas Jefferson once had occasion to observe that for "one hundred and fifty lawyers (to) do business together is not to be expected."

But it is fit that this group includes both lawyers and the others of you who are expert in the broader fields of social service. For ours is a time in which we are experiencing not an expanded sense of charity, but what is really an expanding sense of justice.

This expanding sense of justice has, in the past 2 years, resulted in a series of advances in our attitude toward justice for the poor:

The Supreme Court's decision in the Gideon case established the right of poor defendants to have attorneys appointed for them in State cases. The recently enacted Criminal Justice Act established standards for representation in Federal courts which had been sought unsuccessfully for 25 years. The National Bail Conference last spring already has prompted 60 bail reform projects or studies. And a new Office of Criminal Justice is just beginning its broad-ranging work in the Department of Justice.

All of these developments demonstrate a growing national concern for the legal rights of the poor. So far, that concern has focused on the rights of a poor person accused of a crime. Now, the concern is extending beyond the confines of criminal law. And this is as it

should be. Hopelessness and poverty do not observe neat jurisdictional lines between civil and criminal.

Indeed, there is irony in our devoting great attention and substantial resources to give legal help to poor people when they are accused of a crime, but failing to provide such help *until* that point. Certainly our concern for the indigent accused is not misplaced. But it must not become exclusive. We must be concerned with the jail sentence which a poor defendant might or might not receive. But we must be equally concerned with the broader difficulties of the 20 percent of our population which is, in Attorney General Kennedy's phrase, serving a life sentence of poverty. It is justice, rather than charity, which calls on us to see to it that the law and the lawyer are involved in the effort to reverse that life sentence.

I am sure there is little quarrel with such a high-minded solution. I am sure all lawyers—and all citizens—subscribe unanimously to the relevant platitudes. The interesting aspect of this problem is how little it is understood to be a problem in the first place. When I described this conference to one acquaintance and explained that it did not refer to attorneys for indigent defendants, he asked—well-meaning—what then, was this conference about, helping poor people do things like prepare wills?

His question is not to be scoffed at. Michael Harrington has aptly described the millions living in poverty in this country as the invisible poor. It is no less certain that the problems of the poor which a lawyer can help solve are so far outside the experience of most of us that they are invisible problems. But for the poor person, living in helplessness, they are overpowering.

Most of us have little contact with welfare laws or with housing codes aimed at rat infestation or with minimum wage laws or with protections against usurious loans or installment purchase contracts. And even if we did have that contact, we are equipped as articulate, educated citizens, to deal with such matters. To us, laws and regulations are protections and guides, established for our benefit, and for us to use. But to the poor, they are a hostile maze, established as harassment, at all costs to be avoided.

Consider, for example, what happened to five men in upstate New York in January of last year. For 6 months, they had participated faithfully in a work program for unemployed fathers whose families were receiving public assistance. But on January 30, they refused to carry out their day's assignment. Their reason? It was near zero temperature and the task was to cut brush along a country road where the snow was waist deep.

The five men offered to do different work—indeed, they requested to do so. But they were sent home and reported to the district attorney, who secured their conviction for "a willful act designed to

interfere with the proper administration of public assistance and care." They were sentenced to terms of 4 to 8 months. It took until this past May to have the convictions reversed by New York's highest court.

This reversal did not just happen. It took extensive work by two lawyers provided by the American Civil Liberties Union. It will take the extensive work of many more lawyers—and laymen—to right the wrongs which we can prevent but which the poor cannot. For there are thousands of other examples, less dramatic perhaps, but equally unjust and equally demoralizing, which occur every day, throughout the country.

There is the case of the man caught up in debts who could have gotten a clean start with counseling and assistance in going into bankruptcy. He did, finally, receive legal assistance. A defense attorney was appointed to represent him after he committed a petty offense. He wanted to be arrested so that his family would then become eligible for welfare.

There are large numbers of poor people who discover that they have a binding obligation to pay a finance company for furniture never delivered or for a TV set that never worked. There are large numbers whose cars or washing machines are repossessed after months of payments—who have no idea they are entitled to the return of their equity. There are large numbers whose public assistance is reduced or revoked—who have no concept of their rights of appeal.

These are the people on whose behalf President Johnson has undertaken the war against poverty. These are the people whose problems constitute the new area of public concern—indeed the new area of law—with which we are dealing at this Conference.

To be sure these are not new problems. It is our appreciation of them that is new. There has been long and devoted service to the legal problems of the poor by legal aid societies and public defenders in many cities. But, without disrespect to this important work, we cannot translate our new concern into successful action simply by providing more of the same. There must be new techniques, new services, and new forms of interprofessional cooperation to match our new interest.

Legal scholarship is beginning to enter this new field—to analyze the rights of welfare recipients, of installment purchasers, of people afflicted by slum housing, crime, and despair. There are signs, too, that a new breed of lawyers is emerging, dedicated to using the law as an instrument of orderly and constructive social change.

The Law Students Civil Rights Research Council which previously focused on discrimination is now expanding its area of concern to include the legal problems of the poor. Some of the best law schools—Yale, Harvard, Pennsylvania, Columbia—are adjusting their

curricula so that, for instance, administrative law deals not only with the SEC but also with ADC. Experimental internship programs like those run by Georgetown Law Center are beginning to infuse academic training with experience drawn from the reality of life, rather than the disembodied "facts" of appellate decisions.

Finally, we are beginning to see the growth of new forms of organizations to provide legal service to the poor. The Committee on Group Legal Services of the California Bar Association has just produced a report proposing a massive revision of the rules governing group legal practice. The Legal Aid Committee of the Judicial Conference here in Washington has just given unanimous approval to a proposal for neighborhood law firms to supplement the services of the lawyers referral service, legal aid and the public defender agency. Similar plans are underway in New Haven, Los Angeles and Boston.

Other communities planning comprehensive antipoverty programs can be expected to include similar provision for the extension of legal services to the poor. And the Office of Economic Opportunity has indicated a willingness to support such programs, both as part of a community action program and also as a separate research and demonstration project undertaken by law schools, bar associations and other institutions.

With new resources available, and with the increased involvement of the legal profession in the war against poverty, we can anticipate a rapid acceleration in the extension of legal services for the poor. Your meeting here this week should provide a major impetus to this movement.

One of the threshold problems in this new area is simply to make rights known. Laws do little good unless people know about them. For a poor person to hold rights in theory satisfies only the theory. We have to begin asserting those rights—and help the poor assert those rights. Unknown, unasserted rights are no rights at all.

Second, even if rights are known, they can provide and protect little if they are entangled in a maze of technicality, detail, and subsections. Faced with such complexity, even the informed poor are given the choice of walking through life with a lawyer at their side, or surrendering to the "can't fight city hall" philosophy.

Third, the protection of the rights of the poor depends on advocacy. If the poor are to be treated with fairness and with dignity, their side must be presented fully and forceably. There must be lawyers from all parts of the law, not merely from legal aid societies willing to represent the poor man in trouble.

And fourth, we must generate an understanding that law alone is no answer. If we thought that courts were the place to resolve every dispute, we should be devoting our attention not to providing

legal services for the poor, but to immediately finding thousands of judges for our courts.

The realization of rights in our society is only ultimately—and inefficiently—achieved in courts. We do well to recall the late Karl Llewellyn's description of the right to obtain damages for breach of contract:

That right could rather more accurately be phrased somewhat as follows: If the other party does not perform as agreed, you can sue, and if *you have a fair lawyer, and nothing goes wrong with your witnesses or the jury, and you give up four or five days of time and some ten to thirty percent of the proceeds, and wait two to twenty months, you will* probably *get a judgment for a sum considerably less than what the performance would have been worth—which, if the other party is solvent and has not secreted his assets, you can in further due course collect with six percent interest for delay.*

Our legal system works because litigation is the exception, not the rule. For rights to be worth anything, they must be honored—without lawyers; courts are not the only forums in which rights are adjudicated. There are administrative proceedings, there are dealings with landlords, merchants, social workers, and welfare officials—with all the people whose decisions can deeply change the lives of the poor. It is in these areas, far more often than in the courts, that the poor person needs a counselor and an advocate.

You and I, in our daily lives, act as our own advocates. The poor do not. They concede defeat. They fear to argue because they fear retaliation. The poor need advocates, not simply to present their side of the story but to give them hope, to demonstrate that the law is not an enemy, but a guardian, and that public officials are not their masters, but their servants.

And this is a function which can and must be filled not only by lawyers, but by concerned laymen. It does not take a lawyer to right every wrong. It does not even take professional training. It takes only a human being with the capacity to recognize and respond to injustice.

As an example, let me recall the case on the west coast of a woman with seven children, supported by welfare. A fire destroyed the roof of their house. The woman was too poor to move or repair the damage. The response of the welfare agency was to cut off her welfare payments. She was living, they said, in unsuitable housing.

It does not take a lawyer to react to such a determination—and it did not. A young woman who heard about this case took it upon herself to become an advocate—to go to the welfare authorities and indignantly ask what was the legal authority for the suspension of welfare. The welfare check was issued immediately.

It is this kind of example which we must follow, and inspire in others. It is this kind of problem which can be solved without a

law degree. Not every injury requires a surgeon; not every injustice requires an attorney. The need is for a spirit and a system of legal *first* aid. We need more people like the young woman I just described. We need what is, in effect, a new profession—a profession of advocates for the poor, made up of human beings from all professions, committed to helping others who are in trouble. That job is too big—and, I would add, too important—to be left only to lawyers.

Until we can achieve that kind of broad involvement, that willingness to stand up for the poor and to help the poor stand up for themselves, old wrongs will go unredressed and new wrongs will occur. And neither the poverty nor the injustice suffered by the poor will be remedied. The aim of the anti-poverty program, after all, is not simply to put money in people's pockets. It is to put hope in their hearts and pride in their step. President Johnson has described the anti-poverty program as one which "keeps faith with and puts faith in the dignity and capacity of the individual."

There is no more essential ingredient of such dignity than justice—not only justice in our courts, administered by judges and by lawyers, but justice in our society, with each of us playing a part. The Hebrew prophets spoke not to lawyers alone when they commanded: "Justice, justice, shall ye pursue."

SECTION II

Panel I

The Legal Needs of the Poor

Panel II

New Legal Services for Economically Depressed Areas:
The Neighborhood House Concept—
Organization and Administration

Panel III

Forewarning the Low-Income Community of the Most Common Legal Difficulties: Educational Method

Panel IV

The Lawyer and the Social Worker

Panel V

The Role of Law Schools in the Extension of Legal Services

PANEL I

The Legal Needs of the Poor

INTRODUCTION

The following papers were not intended to provide, nor could they have provided in the time available, an exhaustive treatment of the legal problems encountered by low-income individuals.

Numerous problem areas, notably those of mental health, the commitment of the aged, and legal services to the rural poor, did not receive the emphasis which they deserve.

These papers nevertheless serve as a dramatic statement of certain major needs, both new and old, to which it is hoped greater professional attention may be devoted in the near future.

The Legal Needs of the Poor and Family Law

Professor Monrad G. Paulsen
Columbia Law School

To sketch out the indigent's need for legal services in the area of family law in 10 minutes is, of course, an impossible assignment, but perhaps we may make a small beginning towards understanding.

The poor, like all of us, have difficulty in adjusting to the social environment in which they find themselves. Maladjustment may bring legal problems including many which are related to family relationships. What is and what is not a problem of family law is by no means clear. Mrs. Mary Tarcher, of the New York Legal Aid Society, told me the other day of a recent experience. Coming into the Society's waiting room, she called out to clients, "Who among you has a family law problem?" Several hands were raised. The first woman she approached, in fact, carried a dispossess notice in her right hand. Mrs. Tarcher said to her, "But you have a problem about being thrown out of your apartment." "I know," was the rejoinder, "but if my husband wasn't such a bum, he would have paid the rent and I wouldn't have the notice."

It is useful to remember that law of itself can do very little to redress the most important grievances which men suffer. If each of us were to ask ourselves what is the most disturbing thing which has happened in our life within the last week, I dare say, that thing would be something quite personal. Love is lost. Performance at the job is unsatisfactory. You have failed another in a moment of crisis. Let's test it out by a kind of game. Ask yourself what was the most important happening of the last week and then ask what is the legislative or legal action which could conceivably improve the situation, I think your answer to my question will make the point. Law can do little to modify man's most important concerns.

Yet the legal system must be used in respect to some family maladjustments. If one wishes to terminate a marriage he, whether poor or rich, has the need for legal services. Obviously, we ought to provide indigent persons with this legal assistance. I suggest that the assistance ought to be offered in substantially the same way that it is offered to persons with means.

In some places, legal assistance in the obtaining of a divorce is conducted with requirements which are not generally applied. For example, a legal aid society may insist that anyone who wishes legal help to obtain a divorce must involve himself in an effort at marital reconciliation, employing a scheme prescribed by the agency. At the same time, persons of means (in that jurisdiction) may sue for divorce using a private lawyer without subjecting themselves to this kind of apparatus.

Such a policy can be defended. Perhaps a legal aid society accepting all plaintiffs in marital cases would be swamped beyond their resources. A strong point can be made that ordinary lawyers have a duty to seek reconciliation but rarely do so because of the contrary economic interest in pressing forward with the litigation. A legal aid society having no such interest is free from this pressure. Further, it can be said that legal aid lawyers ought to practice in accordance with the highest ethical standard of the profession. Nevertheless, the point is still troublesome to me. We cannot often offer the same kinds of remedies to the disadvantaged as to the wealthy, but here we can. It seems rather too bad to require something of indigents that is not required of those with means. Perhaps there is a feeling that those without money are likely to be poorer judges of their own best interests. This kind of notion, I believe, runs through a great many of the legal institutions which the poor must use. It's even a hard position to deny. To me, however, it is an unhappy thought because it contributes to what I believe to be one of the most difficult aspects of dealing with poverty: The existence of an attitude on the part of the poor that they are clients rather than citizens, an attitude unhappily reflected in the minds of many of those who deal with them.

This is not to say that every remedy available to wealthy clients should be made available to indigents by means of subsidized legal services.

Sometimes a part of the legal system is quite inappropriate for poor persons. Remedies can be too expensive and not achieve what poor persons really want. The New York Legal Aid Society advises against legal separation. The proceeding is long and costly. The resulting order makes support available only by the cumbersome contempt machinery rather than a court collection process such as is available in the family court. Orders of protection against violence, a

remedy believed to be useful particularly among people in lower-income groups is available in family court but not in the court which handles judicial separation. The order permitting partners to live apart accomplishes little more than they can do for themselves by voluntary separation.

One of the most interesting observations to make is the fact that we have two legal systems in the family law area—one for those with means and one for those without.

Wealthy persons have delinquent children, of course, but they are quite often able to shield them from juvenile court and therefore from the possibility of probation, supervision, or commitment to a public institution. Restitution to the victim can be arranged. Private psychotherapy can be paid for and, if necessary, a private institutional placement can be arranged.

In New York the rich may divorce by visiting Mexico and Reno; the poor have no such option. Even legal assistance to arrange a Mexican divorce may not be possible for the indigent. I suspect a legal aid organization would argue that anyone who can afford to go to Mexico and arrange for counsel there is by that fact ineligible for aid.

Persons of means fight custody battles in the higher trial courts, in divorce actions, habeas corpus proceedings, or motions to change custody orders. Similar issues for the poor are likely to be decided in neglect cases determined in family court.

It is interesting to recall that one reason for objection to exclusive family court jurisdiction over adoptions in New York was that the middle class adoptive parents would be exposed to a shabby clientele in the family court's waiting room.

Sometimes the typical kind of case that is processed through the legal system is different if one concerns persons with means and persons without means. For example, both the rich and the poor adopt children, but surely agency adoptions are relatively rare among the poor. Again I'm told by Mrs. Tarcher of the Legal Aid Society, that the typical adoption case processed by the society is one in which the mother of illegitimate children has married—not necessarily to the father of the child—and the second husband is adopting the youngster. Mrs. Tarcher described these as "our happiest cases."

Someone observed the other day that the basic difficulty of the poor is that they are poor. Every burden of life is made more difficult by the lack of financial resources. Those palliatives to emotional pain which money can buy are unavailable. Expensive legal machinery is impossible to employ. Marital difficulties themselves as well as delinquency and child neglect can be rooted in indigency. A small unattractive apartment in the heart of New York City on a hot summer's day can produce marital troubles almost by itself.

Heavy drinking which makes work impossible has a significance for the employed mother which it may not have for the well-supported suburban housewife. Foolish expenditures can have a consequence in relation to making adequate provision for children which it would not have in the case of families with a sufficient surplus to absorb the consequences of poor judgment. In short, money can make up for human defect. The most significant aspect of my point for us, I suppose, is that persons of wealth rarely have contact with the law of neglect.

We should take a close look at neglect cases when we ask what further needs there are for legal assistance to the indigent. Such cases can be among the most difficult for the persons involved. It is important, I think, that *all* persons interested have legal representation. A failure to recognize the number of important interests involved is a characteristic of legal assistance in this corner of the law.

In New York "the child" is to be represented by the law guardians, but there is no provision for assistance at State expense to the parents. Often the two parents are in disagreement and each has need of a lawyer. Sometimes the mother of the child and her parents are in conflict and, again, each could benefit from a talk with counsel. The end product of a neglect proceeding is often to sever a meaningful parent-child relationship for a lifetime. Surely we ought to afford legal aid to in such heart-rending matters.

The poor not only have their own problems but create problems for others. Taxpayers have broadened the scope of liability in the case of relatives whose relations have been placed on public assistance. There is new law on this subject which may be in the making. In the case, Department of Mental Health, Kirchner,[1] the Supreme Court of California has held that it is a denial of equal protection of the laws for the State of California to impose liability for the costs of a person committed to a mental institution upon relatives. This case has important implications for the question of who bears the burden of support for indigent persons—the taxpayers or the family.

Poor persons require legal advice as well as legal assistance in the bringing or defending of proceedings. A great many human tragedies could be avoided by sound, timely lawyers' counsel. The most casual look into the appellate reports will supply a great many examples. A grandfather apparently believed that by causing his 8-year-old granddaughter to be baptized into the Catholic faith he had, in fact, made her a member of his family in much the same way as a legal adoption would have done. As a result of this misconception, Social Security benefits for the dependent youngster were denied after the grandfather's death. It is true that the grandfather may never have sought legal advice to correct his misconception, yet it is also true that in many places such advice would not have been easy to obtain.

[1] 36 Calif. Repts. 488, 388 pp. 2d 720 (1964).

An imaginatively organized system for giving legal advice to the mothers of children who are to be turned over to social agencies for placement after the birth of the child would be enormously helpful. I think such advice could help spell out clearly the mother's intentions and would restrain some unhappy agency practices taken to implement a policy of encouraging the mothers of illegitimate children to place them for adoption.

Legal aid societies, of course, give this kind of advice, but I wonder whether aggressive extension of legal advice schemes would not be helpful to some prospective clients in much the same way as aggressive casework can be of great help in the social work profession.

The New Public Law: The Relation of Indigents to State Administration

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A phenomenon of extraordinary importance to any serious effort to cope with the legal problems of the poor has taken place within the last 30 years. Government ceased its passive role in the lives of our citizens and undertook its affirmative obligations. It became a mediator and regulator, a dispenser of services and the source of what Reich has labeled the "new property." [1] Government undertook these roles for all our citizens including the poor; and, in addition, for the poor, Government undertook particular efforts—in public housing, unemployment, and other social insurance, juvenile court reform, and youth rehabilitation, a variety of public welfare programs, private housing codes, and mandatory repair laws, various educational programs, minimum labor, health and safety standards and other laws—designed to relieve the harsh conditions of poverty and promote the common good.

With the change in the role of government, both national and local, has come a profound though insufficiently noticed change in the legal relationship of the poor. No longer is the primary contact of the poor man with the law in the ordinary courtroom (criminal or otherwise), but in the anteroom of a city, State or Federal agency as he awaits a determination of vital significance to him and his family.

The better part of the public—including the relevant professionals in social work, law, and agency administration—did not and still do not infer from the relationship the poor have with the legal power of Government agencies, that the poor need legal assistance and advocacy in dealing with the agencies. Three rationales have been im-

[1] Reich, *The New Property*, 73 Yale Law Journal 731 (1964).

plicit in this situation. First, it is widely thought that there is generally *no right* to governmental intervention and assistance. Second, governmental agencies dealing with the poor are created to *help* the poor and not exploit the poor; therefore, legal help is hardly needed to contend with such agencies. Third, governmental agencies dealing with the poor often base their judgments on *expert social evaluations* of what's best for any given poor person or family; to interject the rigidity and contentiousness of lawyers advocating against the position of the agency is, in result, to militate against the best interests of the poor themselves.[2]

The hard test of any position, however, is concrete analysis of the experiences which flow from it. The closer we move toward grasping the concrete experiences of the impoverished, the more disturbing are the questions raised for analysis. Is there a need for the lawyer's counsel and possibly his militant advocacy demonstrated when in the suspension of a deserted mother and her children from a welfare program because of anonymous complaints that she occasionally sleeps with a man? When a slum tenant daily observes the failure of the local housing agency to enforce codes requiring heat in the winter, elimination of rats, and plastering of holes? When a tenant living in a public housing project is evicted with his wife and five children because a sixth offspring has been imprisoned? When an imminent school suspension hearing may leave a child on the streets and out of school for several months? When an unemployment insurance referee determines that a worker had "provoked" his own firing and is, therefore, ineligible for such insurance? When there is a breakdown in communications between the poor man and any one of a number of vital governmental or quasi-governmental agencies, even including, perhaps, the local arm of the anti-poverty program?

This paper shall attempt to examine three related aspects of the relationship of State administration to the legal problems of the poor:

1. The scope of the new legal problems involved as may be indicated by an analysis of those raised by one major area—welfare administration.

2. Decision making in local governmental agencies and the role of the lawyer: the history of an issue.

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[2] Nowhere is the philosophy underlying state social agencies' concern for the clients' best interests rather than his procedural or substantive "rights" more highly articulated than in the literature dealing with the juvenile court reform movement. An early but unusually clear exposition is by Miriam Van Waters, *The Socialization of Juvenile Court Theory*, 13 Journal of Criminal Law and Criminology 61. Among the recent expositions arguing in favor of the "best interest" judgment of the agency in lieu of a "rights" concept, is that delivered by Philip Sokol, on Apr. 18, 1964, to a Columbia School of Social Work Alumni Conference. Mr. Sokol is Deputy Commissioner and Chief Legal Officer of the Welfare Department of New York City. However, at the Sept. 11, 1964, Northeast Regional Conference of the American Public Welfare Association, the same speaker modified his position and emphasized the legal entitlements of welfare clients in a context of obligations.

3. Legal needs of the poor in relation to other governmental agencies interested in representation for the poor.

This paper sets forth the thesis that the new public law,[3] dealing with the legal relationship of administrative agencies to the poor, requires the vigorous participation of lawyers representing the poor for its own proper development as well as for the protection of the particular interest of any given poor person. An effort at such representation in turn requires renewed examination of an old problem: Can lawyers paid from Government monies effectively contend against Government decisions?

I. *The Scope of the Legal Problems at Issue: Welfare Administration*

We choose welfare administration for an exposition of some of the many outstanding and unattended legal problems for two reasons. One is that the welfare program is enormously important: welfare is a matter of life or death to more Americans than any other single Government anti-poverty program. (In the city of New York alone, nearly 450,000 persons receive public aid under the several welfare programs; 320,000 are assisted under the Aid to Dependent Children program alone.[4] In the same city, by estimate of Welfare Commissioner Dumpson, a million persons are "poverty-stricken"—belonging to families whose total income is less than $2,000 per year and individuals (unattached) who earn less than $1,500 per year.[5]) The second reason is that no other long-range governmental program for the poor has been torn by as much dispute and doubt on that which is a matter of legal "right" and that which is a matter of charitable "privilege."

What kinds of legal issues of significance to proper welfare administration have come to light in various parts of our country? In Washington, D.C., a court of general sessions enjoined the local welfare department from enforcing a policy of prohibiting a father, separated by agreement from his wife, from visiting the home "too frequently" in violation of the "man in the house" rule. The department has appealed (Simmons v. Simmons, D.C. Gen. Sess. D–2545–61, June 12, 1964).

In St. Lawrence County, New York State, a criminal indictment was returned against six men who refused to engage in a work relief project requiring them to cut brush in knee deep snow in 12° weather.

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[3] The author confesses some uncertainty about the appropriate label for the ill-defined areas of law here discussed. Generally, the law involved is "public" in that it flows from governmental grant or regulation. It is "new" in that it is primarily a product of the last 30 years and deals with aid to the poor rather than the subject matter of other "public law." Some writers have preferred the term "urban law" in dealing with similar subjects. See e.g., the excellent work of Edgar and Jean Cahn, *The War on Poverty: A Civilian Perspective,* 73 Yale Law Journal 1317, 1341. The difficulty with the term "uban law" is that some of the problems dealt with—e.g. welfare, social insurance, etc.—are as relevant to the rural poor as to the urban poor.

[4] The figures are taken from *Social Statistics: A Monthly Summary,* issued by the New York State Department of Social Welfare for the month of June 1964.

[5] New York Times, Jan. 11, 1964.

The trial court found them guilty of interfering with the proper administration of welfare. An appellate court reversed, upon an appeal brought by the American Civil Liberties Union (People v. LaFountain, 21 AD 2d 719 (Third Dept., 1964)).

In Collins v. State Board of Social Welfare, a 1957 Iowa district court decision, a State law setting a maximum level to grants regardless of family size was held unconstitutional.

In Alameda County, Calif., and numerous other places throughout the county, sharp constitutional challenge has been raised against the practice of "midnight raids" without search warrants by welfare workers seeking evidence of fraud.[6]

The list of problems and issues around the country, ranging from the notorious Newburgh, N.Y. "Thirteen Point Plan" of 1961 to the "suitable home" issues raised in New Orleans in recent years, is endless.[7]

Elizabeth Wickenden, who presents the next paper at this Conference, has done far more to collect news of welfare legal problems around the country than any other person. She will develop the full breadth of those issues. I would like to specify some of the issues existing in one corner of one city, the lower East Side of New York, where I work and have some experience. Each of the problems noted below is based upon actual cases.

Does a family suspended from welfare assistance on the ground of some kind of wrongdoing or fraud have a right to know the precise nature and basis of the ground for suspension? At times, clients—even aided by private social workers—cannot obtain such information. How is the client to disprove the charge? May the client know who his accusers are? If not, can he effectively disprove the charge despite his contention that it is false? Are not these legal issues requiring legal assistance in the face of negative agency determinations?

May a local welfare department refuse assistance to a New York State resident and her baby (born in New York and living in New York for over a year) on the grounds that it is more "socially valid" for the resident to live in another part of the country where her stepmother has allegedly offered a "resource," home shelter, even though she is not eligible for welfare aid in the other state because of her New York State residence? Are there constitutional issues in this case which only a lawyer could raise? Consider Edwards v. California, 314 U.S. 160 (1941), and Sherbert v. Verner, 374 U.S. 398 (1964), in relation to this issue.

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[6] See Reich, *Midnight Welfare Searches and the Social Security Act,* 72 Yale Journal 1347 (June 1963).

[7] See Lukas, *The Rights of the Poor—In What Ways Are Civil Rights of the Poor Safeguarded or Infringed on by Social Work Practices,* paper presented at the Alumni Conference of the Columbia School of Social Work, Apr. 18, 1964, for a general summary of some national items.

If the woman, in the above case challenges the factual allegations made by the welfare department: e.g., that her stepmother in the other part of the country really did offer to give her shelter (though nothing else) who can better help her establish her challenge to the factual allegations at a hearing than a lawyer?

If a client needs some beds for the children to sleep on—or a motorized wheelchair for her paralyzed body—or a bigger rent allotment than that given as the result of a caseworker's mistake—is there a time limit to how long the bureaucratic process may take in resolving the family's request for help? Or can the rent checks go unadjusted for over half a year and the wheelchair ungranted for more than a whole year (despite clear need and private social worker's help in presenting the requests)? Is there a remedy in law to force a reasonably prompt determination and grant? Under New York law there is, but how is it to be obtained without a lawyer's help?

If the head of a family on relief defrauds the welfare department by earning a hundred dollars selling dresses and not reporting that income, may the welfare department suspend aid to the three children of the client, all under the age of 4 years, and thereby create a danger of starvation? Is this an issue of the intent of the social welfare law? If the welfare department may suspend aid—for how long may they suspend aid? Can the babies be indefinitely punished for the mother's sin?

Can they be so punished for 1 year or for 6 months? Is this an issue which needs a lawyer's assistance?

In a state which bars welfare aid to those who came for the purpose of obtaining such aid, what facts are relevant to the determination of purpose? Does the very need for aid give rise to a presumption of purpose? If a young mother of six children, abandoned by her husband, comes to New York with her children to be near her relatives, including her own mother and father, but needs welfare assistance, can she be found as having come here for the purpose of obtaining welfare aid? Are not these issues matters on which legal assistance is warranted for the client?

If a family is in need, but is under investigation for some kind of alleged failure to cooperate, shall the children get emergency assistance pending the investigation's final result? New York law is clear that they "shall" receive emergency aid. When they do not, as will happen—and a social worker's effort to help fails—do they have an effective remedy in law? The writer believes so, but surely it would require a lawyer to effect the remedy.

One could go on with the issues. For example, New York has its own variant of the "midnight raid" and "man in the house" rule. One case sent to our office dealt with an abandoned mother who was the subject of anonymous complaints that a certain man slept with her.

The theory of the welfare department apparently is that if a male sleeps with the client, he is presumably a source of income. If he is a source of income, then suspension will result if the client failed to report the income. The woman's home was "raided" by a special investigator and a uniformed policeman at 6:30 a.m., without a warrant. A man was found in the apartment.

Is the presumption of support reasonable? Is the alleged though disputed consent obtained to the search sufficient in law? Is this method of obtaining evidence legal? Failure to report income is also a criminal offense. Should the welfare mother be entitled to the same legal protections as the suspected ordinary criminal? Time magazine has recently described New York's version of the midnight raid as:

The Early Morning Visit, in which investigators charge into a woman's flat at 5 a.m. like gangbusters, and if a man is present, try to find out whether he is filching welfare money or dodging child support. Not surprisingly, some welfare workers object to the technique.[8]

How pervasive are some of the other problems mentioned above? The most frequent problem encountered by persons already on the welfare rolls appears to be that dealing with unreasonable delay in the granting of needed items of aid. The "welfare abuse" problem referred to above, that is the case dealing with alleged purpose in coming to New York, has been an extensive problem and is discussed in detail below. Another problem discussed above, the case of the lady who originally came from another State, appears quite similar to the problems of the group of people described in the 1962 Annual Report of the New York State Department of Social Welfare as numbering 1,347 in the 20-month period preceding the report.[9]

One of the cases cited above deals with the Kafka-like situation one family head found himself in when aid was suspended to his family and he was unable to find out why. In fact, it was not until a lawyer appealed his case that reasons were forthcoming. Shortly after the appeal, before a hearing was held, the welfare aid was reinstated. How often are people suspended from Welfare without even knowing the reason—no less the particular information necessary to

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[8] Time, July 31, 1964, vol. 84, No. 5, p. 17. William Stringfellow, a deeply religious young lawyer who spent 7 years in East Harlem practicing law for poor people, reports in his recent book, "My People Is the Enemy": "I had one case in which an investigator climbed a tree at 2 o'clock in the morning in order to perch there and spy into the window of a project apartment of a welfare family waiting to see or hear something that could be used against the family to disqualify them for further assistance" (p. 75).

[9] *Public Welfare in New York State in 1961,* Annual Report of the New York State Department of Social Welfare, issued Feb. 15, 1962, p. 25. The 20-month period immediately preceded Aug. 31, 1961. The persons in the category described were referred to as residents of other States. Initially, at the hearing of the case referred to in the text, the welfare department referred to her as the resident of another State. When it was established that the claimant was in fact a New York resident, the department contended that that fact was irrelevant since the claimant "belonged" in the other State despite the acquisition of residency here.

answer any charges? The Moreland Commission Report on Public Welfare in the State of New York (1963), stated (p. 68):

Similarly, when cases are closed, are reasons given? Again—not always. In one county, for example, 35.7 percent of those interviewed claimed they were not told why assistance was cut off, and the case records failed to indicate that the former recipient had been given a reason.

Several of the particular cases referred to above go to the question of initial eligibility rather than administration after eligibility is determined. Does this reflect too much of a concern for eligibility issues on the author's part? In 1961, more than a quarter of a million applications for public assistance were made in New York. Thirty-nine percent of these were rejected.[10] Consider this rejection rate against the background of Commissioner Dumpson's estimate, cited earlier, that a million persons in New York City are poverty-stricken, below the margin of adequate subsistence, while at the same time less than half that number actually receive public aid. In Westchester County, just north of New York City, the President of the Westchester Council of Social Agencies 2 weeks ago released the findings of a study of persons living there in "abject poverty" (defined as an income of less than $3,000 a year for an urban family of four or more). She stated:

The most startling fact is that more than five times as many people are living in abject poverty as are receiving aid from the Westchester County Department of Public Welfare.[11]

Many of the 39 percent rejected for welfare aid are undoubtedly among the great numbers of New Yorkers who live in "abject poverty." Is the great concern of welfare workers for rooting out the supposedly ineligible—reported by the Moreland Commission as a primary preoccupation of welfare workers—a matter to be carefully scrutinized by an advocate for the supposedly ineligible? We know that one major consequence of the effort to root out "ineligibles" is that less time and effort is given towards actual help and rehabilitation efforts with the families.[12] Commenting on this emphasis on eligibility, Greenleigh Associates, the research organization for the Moreland Commission, declared:[13]

An applicant becomes eligible for assistance when he exhausts his money, gives a lien of his property to the welfare department, turns in the license plates of his car and takes legal action against his legally responsible relatives. When he is stripped of all material resources,

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[10] Annual Report, *supra* note 9 at p. 32.

[11] New York Times, Oct. 29, 1964, p. 37.

[12] Moreland Commission Report (1963), p. 27.

[13] Report to the Moreland Commission on Welfare of Findings of the Study of The Public Assistance Program and Operations of the State of New York (November 1962), Greenleigh Associates, Inc., p. 78.

when he "proves" his dependency, then and then only is he eligible. Welfare policies tend to cast the recipient in the role of the propertyless shiftless pauper. This implies he is incompetent and inadequate to meet the demands of competitive life. He is then regarded as if he had little or no feelings, aspirations, or normal sensibilities. This process of proving and maintaining eligibility in combination with the literal adherence to regulations and procedures tends to produce a self-perpetuating system of dependency and dehumanization.

If needy people are to be rejected because of a caseworker's "literal" interpretation of a regulation, is it possible that a lawyer's advocacy on the proper interpretation might be desirable? If the result of present policies tends to dehumanize welfare clients by treating them as devoid of feelings and sensibilities, is it possible that a lawyer's dedicated representation can contribute not only to the client's financing, but to his or her self-recognized status as a man, a woman, an equal American citizen? Indeed, is it possible that representation of clients by lawyers can improve the humane administrator's ability to effect better policies? We turn to the latter question next.

II. *Decision Making in Local Governmental Agencies and the Role of the Lawyer: The History of an Issue*

Most of us are inclined to place a great deal of faith in the "good guy" versus the "bad guy" theory of government. If there are problems in the legality of various agency practices—put in a "good guy" to head the agency. If the agency ineffectively carries out its enforcement duties, it must be because the agency is led by some sort of "bad guy"—throw him out and replace him with a "good guy." Good guys, after all, will see to it that good policies are effectively carried out and fairly applied.

Unfortunately, the functioning of government becomes somewhat more complicated for those who are its agents; this is particularly true on a municipal or otherwise local agency level. The life of the agency head, no matter how dedicated and competent he may be on his professional level, consists of a highly politicalized effort to maintain his own survival and the survival of the agency, while he accepts a compromise here to win a professional gain there. Sayre and Kaufman, in a brilliant analysis of the administration of the line agencies in New York City, summed up the administrators' problems this way (Governing New York City, p. 305) : [14]

. . . The strategies of the line administrator—winning internal control of his agencies, and manipulating his environment—require, as we have seen, accommodations with all the participants in the contest for the stakes of politics who are concerned with the agency decisions. To render himself less vulnerable to all the conflicting and contradictory demands and instructions, and to all the forms of resistance and opposition to his will, the agency head has to muster the support of all the friends he can find and strike bargains with everyone around him. To preserve his discretion in some areas of his juris-

[14] Russell Sage Foundation, 1960.

diction, he must surrender in others. He has to placate his allies to keep them on his side and pacify those who are rarely active in his aid lest they use their influence to injure him and his agency. He has to balance a welter of factors to survive, let alone to progress, for virtually everyone he deals with has an independent source of power.

The line administrator then, no matter what his personal excellence, almost invariably has to bargain and compromise. He does not and cannot call his own shots, developing his own policies in the manner that his best professional instincts may cry out for him to do. This is as true, or truer, in welfare administration as in that of any other local government administration.

Among the many extraordinary pressures which welfare administrators in most large cities must contend with are: the ordinary pressures for economy; the extraordinary pressures for economy that continually arise; the organized and strident anti-welfare demagogues who constantly seek material to exploit for their claims that the lazy and fraudulent and the welfare client are synonymous; the constant internal pressure from an overworked, underpaid, and ever-changing staff; internal maneuvering from a would-be successor; external relations with a State agency which may be led by an administration of the other political party.

Additionally, as noted by Dean Rostow, the administrator, in the face of such pressures, must work with statutes which are often purposely made ambiguous so as to allow room for shifting compromises resulting from a lack of any effective political consensus on what should be done.[15] Moreover, though the pressures are many, one of the weakest pressures of all—indeed it is virtually non-existent—is that which comes from the welfare clients themselves.

In the context of the problems and politics of agency administration, the lawyer who represents the impoverished client introduces a new element. By fighting for his client, by engaging the issue involved in his client's cause with the judicial or quasi-judicial process, the lawyer not only creates the possibility of reversing an improper interpretation of law which affects many others in addition to his client, the lawyer increases the administrator's potential for effecting humane policy and the clientele's rightful entitlements.

It is helpful at this point to examine in some detail the history of one major issue in New York welfare administration and the lawyer's contribution to its solution.

The History of an Issue: The "Welfare Abuses" Law of New York

New York has never had a residence law which required a person to live in the State for a certain period of time before he became eligible for welfare. In 1960 and 1961, however, certain groups in the

[15] Rostow, *Law, City Planning and Social Action*, The Urban Condition 357 (Duhl, ed., Basic Books, Inc., 1963).

State, disturbed by recent migrations, undertook a strong campaign to effect such a law. A hue and cry was raised, fed by the antics of Manager Mitchell in Newburgh,[16] alleging that undesirable newcomers were flooding the State relief rolls. Though less than 2 percent of public assistance furnished by the State went to persons in the State for less than a year, in 1960 the legislature passed a bill restricting aid to residents. It was vetoed by the Governor.[17]

In 1961, the effort for a residence restriction law was again underway. Commissioner Dumpson of New York City, vigorously opposing a residence law, answered the argument that newcomers come to the State for the purpose of obtaining relief. He stated:[18]

. . . In recent years, due to the restricted immigration laws, immigration to New York has come largely from Puerto Rico and from the southern states. Our experience in the Department of Welfare clearly indicates that people migrate to New York City in search of a 'better life.' They are seeking employment opportunities, a better employment experience, better housing, better educational opportunities for their children, for health reasons, and to join friends and relatives. These are the reasons for which five million Americans move within the nation every year. They are the reasons which prompted migration to the United States from the beginning of our history. People do not move to New York in order to receive public assistance. People come to New York City in response to the lure of many of our industries. Indeed, our State and local economy, in large part, is dependent on this in-migration of workers. In simple justice, we cannot enjoy the benefits of our health and welfare services when need arises . . . .

In the spring session of the State legislature, the pro- and anti-residence law forces seemed deadlocked. Finally, a "compromise" appeared: a proposed bill to deny welfare aid to those who came to New York for the *purpose* of obtaining welfare aid but to grant it to other newcomers. The bill, in an effort to please the humanitarian groupings, also provided that temporary emergency assistance shall be given to those who are in immediate need, regardless of their purpose in coming to New York. The pro-residence law forces accepted the compromise. They could say that the law now barred aid to the "freeloaders." Some of the anti-residence law forces accepted the

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[16] Mitchell promulgated his infamous 13-point plan in 1961. Upon motion of the State Department of Social Welfare the New York Supreme Court enjoined the city of Newburgh from effecting the plan. *State Bd.* v. *Newburgh,* 28M 2d 539 (1961). The plan, designed to drive people from the welfare rolls in a variety of ways, was in part based on the charge that great numbers of "undesirables" go to Newburgh to get public assistance. In point of fact, only $205 was spent by that city for home relief in 1960, and that sum was fully reimbursed by the State. Nothing was spent on ADC for nonresidents in 1960. Annual report, *supra* note 9 at p. 6.

[17] See Governor Rockefeller's veto message of Mar. 22, 1960. The "less than 2 percent" figure is taken from that message.

[18] Statement on the Proposal to Enact a Residence Law for Public Assistance by James R. Dumpson, Commissioner of Welfare, New York City, reproduced in "Here It Comes Again," State Charities Aid Association, 105 East 22d Street, New York City.

compromise.[19] They knew that hardly anyone really came to New York for such a purpose; no one would suffer.[20]

The bill then, was a compromise between varying political factions. Each faction anticipated a different result. It was passed into law, and labeled the "welfare abuses" law. The legislative contentions were over. It was time for the varying pressures directed toward the administration of the law to begin.

In the first 10 months of the law's existence, 2,730 people were denied aid on the ground that their purpose in coming to New York was to receive aid. Of these 2,730 persons, only 387 were given emergency aid.[21] The total number rejected was, to say the least, surprising in the light of the firm conviction of social workers and others, including the New York City Commissioner of Welfare, that people simply do not migrate for the purpose of receiving welfare aid. The minuscule number who received emergency aid—about one out of every nine rejected—seems even more surprising. If the 2,730 were rejected because of their purpose in coming to New York and not because of their lack of pressing need, would not more than one out of nine need temporary assistance?

Two years went by. The numbers of rejectees continued to mount. The numbers denied emergency aid grew. In 1964, a lawyer interviewed the heads of several families who had been denied aid—emergency or otherwise. We spare the reader the "details" of their stories: pain and suffering, the edge of starvation, a dank basement room for six children with no electricity—cooking facilities—or toilet, the odor of death. We note only that to both the rejected applicants for aid and the lawyer it seemed clear that their purpose in coming to New York was *not* to obtain welfare aid, though they desperately needed welfare aid, but for a variety of other perfectly legitimate reasons. It also seemed clear that a terrible need for emergency aid in each case existed.

As the lawyer interviewed clients, a pattern seemed to emerge. The same two erroneous presumptions by welfare workers appeared regularly. These were:

1. A person who comes to New York without an adequate plan of support, and possibly knowing that she will need welfare help, therefore comes for the *purpose* of obtaining welfare help.

[Clearly, the actual purpose of such a person who comes to New York could be for a variety of other reasons; e.g., family reasons.]

2. The presumption that emergency aid under the welfare abuses law should only be given to those who agree to leave the State.

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[19] See the Legislation Information Bureau Report of the State Charities Aid Association, Mar. 28, 1961.

[20] The Governor, in approving the law, noted that only those who came for the "sole purpose" of receiving public assistance were ineligible under the law. See 1961 New York Legislative Annual Report, pp. 446–447.

[21] Moreland Commission Report: Public Welfare in the State of New York (1963).

[The regulations and procedures adopted under the statutes are explicit in not limiting emergency aid to such persons.] [22]

What pressures underlay the growth of two such presumptions—presumptions inconsistent with the law that was actually passed? In part, it was the pressure of understaffed and undertrained caseworkers whose "social evaluation" plays an enormous role in any such case. Partly also, it was a variety of "political" forces which pressured for and gradually enforced the interpretations we write of. In any event, a liberal commissioner of welfare had been rendered largely powerless to reverse the process. Indeed, by the time of the hearing of a test case on the welfare abuses law, the welfare department's lawyer argued in his brief that if the claimant's arguments were accepted:

. . . then we can no longer deny public assistance to anyone seeking better education, better hospitals, better health facilities, better municipal concern for the downtrodden and the underprivileged. This City and State could then become the Mecca for all disadvantaged persons, regardless of their origins; and the taxpayers of this State would be required to assume the burden for all who come or are induced to come here.

Nevertheless, the hearing process, the briefing of the case and reply briefs, the readiness for further court appeal if necessary, the light of rationality and quasi-judicial and judicial decision making power, also had its effect. The false presumptions were declared the errors that they were and the determination of ineligibility was reversed. Every other case in this area also brought to the lawyer's attention was reversed and aid granted—each was based on similar error.

It is the writer's serious speculation that of the 2,730 cases denied in the first 10 months of the welfare abuse law's existence, 2,700 could have been reversed on appeal to the State board of social welfare—or the courts—if the claimants had the vigorous advocacy of a lawyer (for the truth is, people do *not* emigrate for reasons of obtaining welfare aid). How many others since the first 10 months—or even today, due to lack of sufficient uniform application of the law—needed and need such advocacy?

In any event, the contribution of legal representation on this issue was to establish the *right* to entitlement, puncture slipshod social evaluations, and make more possible the humane policy urged from the first by the administrator of the agency in question.[23]

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[22] See, e.g., Procedure No. 61–61, New York City Department of Welfare.

[23] The history of this issue is not yet complete. In welfare administration generally, hearing decisions do not have the precedent effect they should. Indeed the decisions are often unknown from department to department or area to area. Social agencies have not, generally, carried out the informational campaign that they should as they are largely unattuned to the legal process in welfare administration.

III. *Other Areas of Legal Need Involving Governmental Agencies—and a Problem of Ethics for Lawyers and Governmental Agencies Interested in the Legal Representation of the Poor*

This paper began by suggesting that there was a need for legal counsel—and at times militant advocacy—for the poor in their dealings with virtually all agencies charged with the administration of the new public law. We have chosen to concentrate on the legal needs arising in connection with one agency, welfare administration, only to illustrate the more general point. Perhaps a limited discussion of some issues from other significant agencies is here appropriate. We consider two other agencies, the public housing authority and the local board of education.

Public Housing

The New York City Housing Authority, established in 1934 to provide homes for families of low income and to clear slums, is today the city's biggest landlord (housing several hundred thousand persons).[24] A low-income family in New York City today, seeking decent apartment quarters, will either be fortunate enough to obtain public housing or will probably have to suffer the consequences of living in a substandard slum home.[25] The authority receives approximately 85,000 applications per year; there is room for only a fraction of that number.[26] Obviously, the grounds used to reject an application—and the grounds used to evict a family already admitted—are of fundamental importance to the poor.

The public landlord is concerned, quite properly, with tenants who will not pay rent, who will destroy the landlord's property, who will spoil the possibilities for good relationships among the other tenants. So, too, is the responsible private landlord concerned with these things. Nevertheless, even the most pro-landlord lease designed by a local real estate board will usually prohibit a landlord from arbitrarily terminating that lease. If the landlord does so act, the tenant will have remedy either in court or in an arbitration proceeding.

But the typical public landlord offers his tenants no such protection. Upon the recommendation of the Federal Housing and Home Finance Agency, the typical public housing lease is drawn on "a month-to-month basis whenever possible." Is this a recommendation designed to protect the tenant? Hardly. The Agency states as the reason for its recommendation:[27]

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[24] Tenants' Handbook, New York City Housing Authority, p. 2.

[25] 1962 Annual Report, New York City Housing Authority.

[26] In 1962, 10,000 families moved into public housing apartments, *supra* note 25.

[27] Local Housing Authority Management Handbook, The Public Housing Administration—Housing and Home Finance Agency, pt. IV, sec. 1, No. 6(d).

This would permit any necessary evictions to be accomplished with a minimum of delay and expense on the giving of a statutory Notice to Quit without stating the reasons for such Notice. (Our emphasis.)

However, where housing authorities choose to assert an arbitrary ground for denying admission or terminating a tenancy, such authorities have exceeded their legal power. Said one court:[28]

The government is under no duty to provide bounties in the form of low-rent housing accommodations for its citizens. If it elects to do so, however, it cannot arbitrarily prevent any of its citizens from enjoying these statutorily created privileges. . . .

Is it not time for lawyers—representing public housing tenants—to seriously review the statutes and other decisional material to determine whether the quiet refusal of a housing manager to state reasons for termination is consistent with law?

In New York City, in the late 1950's, hundreds of tenants were evicted from city housing projects on loosely stated charges of "undesirability," without opportunity for fair review. Citizens groups publicly stated their "outrage" at such "unjust evictions."[29] Wide-scale demand for a change was made and a change was indeed instituted. A tenant review board (composed of authority representatives) was created to review and make a final determination of all proposed evictions regarding nondesirability. An opportunity is given to the tenant to appear and hear the charges against him, make a statement and present his own witnesses.[30]

But the tenant is not allowed to cross-examine those who made the charges against him; he cannot even learn who they are; he cannot have a record of the hearing. No official notes are even kept of the hearing which he may see. If one of his sons has been imprisoned, that is a ground for his eviction; if another younger son has played on the grass, that fact is recited—to show "the whole family pattern." The loosest sort of hearsay statements are quoted against the family—and if a tenant questions the source, he is told it is from a trusted employee of the project. If a tenant's lawyer then questions whether the statement was made by the trusted employee because he was a witness or whether the employee is merely repeating what another person told him, the lawyer is met, in some instances, with a blank stare on the part

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[28] *Peters* v. *N.Y.C.H.A.*, 128 N.Y. 2d 224, 236, *aff'd* and *modified*, 283 App. Div. 801, *rev'd on other grounds*, 307 N.Y. 519 (1954). See also, *Chicago Housing Authority* v. *Blackman*, 4 Ill. 2d 319 (1954); *Housing Authority of Los Angeles* v. *Cordova*, 279 P. 2d 251 (1955); *Lawson* v. *Housing Authority of Milwaukee*, 270 Wisc. 269 (1955). These cases deal with efforts to impose loyalty oaths as a standard of eligibility for public housing. Few cases treat the adequacy of eviction standards and procedures on "nondesirability" issues. See, e.g., the dissent of Hofstader, J., in *Watson* v. *N.Y.C.H.A.*, 27 M. 2d 618 (1960).

[29] New York Times, Mar. 29, 1958.

[30] New York City Housing Authority, Resolution Relating to Desirability as a Ground for Eligibility, Res. No. 62–9–683, Sept. 12, 1962.

of review board members. In other instances, the lawyer is asked, "What do you want, a regular trial of all these incidents?"

There is enormous need for lawyers to test the standards and procedures of eviction procedures in public housing. Such tests will have the further desirable effect of clarifying some of the admission standards which affect even greater numbers of persons.

Education

Some of the most subtle and yet important issues for lawyers to be devoting attention, and perhaps representation, are in connection with public education. There is at least general familiarity with the difficult legal issues relating to de facto segregation and integration in the public schools. How about the ordinary school suspension hearing however? Are the factual issues which must form the basis for the disposition reached by such hearings adequately attended to? The consequences to the life of the child in question may be far more severe than a minor criminal charge in later years.

The hearings that I have been informed about do not deal with trivial matters—as they should not if a suspension is involved. They deal with alleged assaults, thefts, indecent exposure, extortion, and the various conduct patterns which often appear in a juvenile court proceeding. Lawyers—if they have any virtues—are presumed to be experts in the methods of determining facts. Nevertheless, I know of no effort anywhere—even on a study basis—to analyze factfinding in suspension hearings with a lawyer's eyes and skills.

Equal in importance to the factfinding at such hearings is the disposition of suspension cases. Yet it is not infrequent, at least in my city, for suspended children to be left without any plan whatsoever for months (or longer) at a time, while their case records churn through the bureaucratic procedures or are left to rest in untouched files. Such results can be more than unfortunate to the well-protected middle class child. To the slum child, it can mean personal disaster of the worst sort.

Statute, at least in New York,[31] requires the board of education to take "immediate steps" to institute an alternative plan of education for a suspended child. When a suspended child is ignored for months, has there been a failure in legal obligation? Does the legal obligation itself imply that the parent can take legal steps to require the board to perform its legal duty? Would not such an action force a revision and improved procedure generally? Questions, not answers, are here being posed. But they are questions which require the involvement, the time, and the dedication of lawyers. To those who would argue that these are matters for educators and social workers, the writer contends that a lawyer's role may at times be that of impelling educators and social workers to do their duty.

[31] Education Law, sec. 3214(6)(b).

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A Problem of Ethics for Lawyers and for Governmental Agencies Interested in the Representation of the Poor

There is a peculiar aspect of striving for legal representation of the poor in their dealings with government agencies which requires one to speak of the reaction of the government agencies when the representation occurs. The rich pay for their own counsel; the antagonism of their opposite parties customarily has little effect on the dedicated nature of the legal representation. The impoverished cannot pay for their own counsel. With regard to the legal needs we have been speaking of, it is the same government with whom the poor are contending that must pay the bill or develop and fund the institutional entity that employs the lawyer.[32] That is why the reaction of the government agencies to representation of the poor is a subject to be considered.

The subject becomes a particularly pressing one when the board of directors of the institutional entity that employs the lawyer is the "microcosm of the total community" [33] that is typical of anti-poverty or anti-delinquency projects. Such an institutional entity includes on its board of directors leading representatives of each of the local agencies with which the lawyer must contend.

There is, of course, no uniform reaction on the part of agency representatives to the results of legal service for poor persons in contention with the agency. Particularly with agencies which, for varying reasons, are not unused to the lawyer's role, problems caused by reaction to advocacy are minimal.[34] With others, the reaction can be sharply different. Still elsewhere, the worst of the matter might result from anticipation of reaction on the part of the project's friends in local government who are interested—quite legitimately—in the maintenance of good relations between the project and the local government.

Neither is there a uniform reaction based on the nature of the issue which has become the source of legal contention. Earlier we spoke of legal advocacy for claimants which makes it more possible for humane administrators to effect policies they endorse. Yet, legal action may produce strains, irritations, and a sense of being threatened which clouds all else. Who, after all, readily accepts the notion that additional pressure of a compelling sort is something to be directed at oneself? When the nature of the issue involved produces

[32] Of course, some legal aid societies are voluntarily financed. To expand the work of such societies in such a manner as to allow comprehensive coverage of legal need relating to governmental agencies would, in all probability, be well beyond the capacities of voluntary financing.

[33] For a description of the varying forces that constitute the Board of Mobilization for Youth, Inc., in New York City, see Grosser, *Neighborhood Legal Service: A Strategy To Meet Human Need*, to be presented at the Conference on the Extension of Legal Services to the Poor, Nov. 12, 1964, in Washington, D.C., pp. 9–11.

[34] For example, there has been no hostile reaction experienced whatsoever on the part of MFY Legal Services Unit with Housing Authority representatives, though the unit is presently engaged in court challenge of existing practices.

direct conflict with policies the administrator favors—or flouts the professional pride of a specialized group—the reaction may be even sharper.

The lawyer who represents the poor in contention with government, while paid with government money in an institution partly directed by government personnel, may quickly find that his position is not fundamentally different from that of the line administrator as described by Sayre and Kaufman. He is soon involved in a highly politicalized effort to maintain his own survival and the survival of his agency—while he accepts a compromise here to win a professional gain there. To preserve his discretion in some areas, he may surrender in others. Accommodation with those who are concerned with his agency's decisions is often needed to render himself less vulnerable to all the conflicting demands of others who may affect his agency's future.

How does pressure make itself felt? If the lawyer writes to a local board of education for a copy of its suspension rules, he may find that his letter has been brought to the attention of others in the project. If he takes his client through a State welfare department hearing, he may learn to his surprise that a complaint has been lodged with the referee of the hearing charging him and his organization with "the unauthorized practice of law." [35] If the lawyer is too persistent and too militant in his advocacy with certain agencies, he may find that a high official writes to his organization's director to state that the lawyer's activity on behalf of his client "raises a serious situation in our inter-agency relationship." [36] At another time, a well connected and highly placed person will tell the lawyer that he must not "threaten" litigation on behalf of certain clients already retained: perhaps a "study project" will provide the best solution.

The lawyer may go to his organization's director and find that he is fortunately situated with a decent and dedicated man who supports the lawyer's work. The lawyer may go to his university faculty advisors and find extra sources of strength. In the end, as with all of us, he must look towards himself.

There is a lawyer's ethic requiring him not to betray his client—observing that ethic is both his duty and his greatest source of strength. Meanwhile, he will slowly learn that open and frank discussion of the pressures and problems he meets is, in the long run—

[35] Fortunately, however, the lawyer will be able to explain that his organization has been authorized to practice law by the appropriate court and that he is a member of the bar; he will also note that State welfare department rules make clear that a representative of a social agency (which lacks authorization to practice law) is entitled to represent claimants in state board hearings. The referee will be satisfied and the lawyer will wonder who could have made the complaint.

[36] The letter will also note that "we agreed to work cooperatively in the use of your legal services unit." The lawyer will wonder who agreed to what. He will speculate on how such formulations affect the duties he owes exclusively to his client—and not to his employing organization or to local agencies before which he represents his clients.

though perhaps not immediately—the very best contribution he can make towards the provision of adequate legal services for the poor in their dealings with governmental agencies.

The lawyer's ethic in serving his client, poor or rich, is a well-established one. That ethic applies, however, only to a lawyer-client relationship already established. It does not and cannot serve to prevent a policy decision preventing him from establishing a lawyer-client relationship on certain matters or in relation to certain agencies. It is in this connection that government, if it is truly interested in making counsel available for the poor with whom it deals, must establish its own ethic: it will make lawyers available without any conditions or limitations other than those imposed by the lawyers' own legal judgment and sense of duty.[37]

The government's obligation to establish legal recourse for the poor in their dealings with governmental agencies is today merely in the argument stage. It is an obligation, however, which should be assumed, particularly in the war against poverty, partly because the poor themselves need representation; partly because the law is best developed with representation; partly because the war against poverty needs that "civilian perspective . . . of dissent, of critical scrutiny, of advocacy, and of impatience" [38] which lawyers for the poor can bring to it.

The assumption of such an obligation on the part of government will mark the beginning of a new blossoming of civilized and dignified human relationships within our country. Assumed without conditions attached, it will establish a new and higher ethic for government. Surely this should be done.

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[37] For an excellent paper urging legal services for the poor, including services before crucial governmental agencies, see Alanson W. Wilcox, *Enlisting Legal Services in the War on Poverty,* given before the Virginia State Bar Association, on July 4, 1964.

[38] Edgar S. and Jean C. Cahn, *The War on Poverty: A Civilian Perspective,* 73 Yale Law Journal 1317, 1318 (July 1964).

The Indigent and Welfare Administration

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Now that the election is over and we are once again able to get on with our usual business of setting the world to rights, the war on poverty is being resumed on all fronts. As a somewhat battle-scarred veteran of this struggle—having been one of its mercenaries since 1932—I find myself, like all old soldiers, interpreting its history on a wide variety of fronts. I have talked to social workers on "Social Welfare and Poverty," to economists on "Social Security and Poverty," to doctors on health and poverty, to lawyers on law and poverty, to community planners on the community and poverty, and I am preparing now for the child psychiatrists. I tell you this to underscore the fact that even though everyone sees the war on poverty in the light of his immediate task, in my own view the very heart of the problem for us in the United States is one of *entitlement* under law: hence a primary challenge both to practicing lawyers and to all those who concern themselves with the framework of law within which we live. This general conclusion is the basic thesis of my presentation but I come to it from a very particular point of view.

I should explain to you that I am a special pleader for the most beleaguered victims of the poverty struggle: the recipients or should-be recipients of public aid. These people (*actual* recipients currenty number about 8 million individuals) are not only the victims of every failure in our social system—from racial discrimination and unemployment to family desertion; they are not only the poorest of *all* poor (you know, I suppose that an assistance child in Mississippi gets just about $100 a *year* on which to live) but on top of all that they must carry the full weight of our generalized disapproval. Even the most eager battlers against the collectivity of poverty are inclined to look upon the actual welfare recipient as a wanderer from the

mainstream who needs to be saved, rehabilitated, and set back up on the path of Protestant-ethic rectitude. The fact that he may be lying on a nursing-home bed in his extreme old age or one of a family of very young children does not affect the popular image. But more of this later. At this point I am trying to explain how I came to my present conviction that law and the legal profession are *principals* and not simply helpers in the poverty battle.

The welfare salient of the war on poverty operates largely on the basis of attrition between the forces that create need and those devoted to its alleviation but it does have its decisive engagements and one of these occurred in 1959. In that year the Louisiana Legislature passed a law which had the effect of depriving 23,000 children—largely Negro and all in families containing at least 1 illegitimate child—of the public aid on which they had been dependent for survival. It was apparently the theory of the legislature that starving the children would retroactively either restore the caution of their mothers or draw their fathers into the harness of familial responsibility. In actual fact children were found scavening in garbage pails and—to our embarrassment—collections for them were taken up in the capitals of Europe.

In casting about for allies in this confrontation it was suggested that a legal approach might be fruitful, that Louisiana might well be challenged under provisions of the Social Security Act (since the Federal Government was paying a major share of the assistance bill) or even on constitutional grounds. Without going into all the details—significant as they are—the organizations interested in fighting this particular battle encouraged the Social Security Administration to call upon Louisiana to explain its actions at a formal hearing and six of them retained lawyers to file amicus curiae briefs arguing their position against Louisiana in terms of points of law. As a result of this hearing the policies of the Federal agency were themselves modified to make this type of action impossible and this decision, commonly known as the "Flemming ruling" was subsequently largely incorporated in the Social Security Act itself.

But for those, like myself, interested in welfare policy, it had a more important long-range effect. It brought home as nothing else had done the potentials of legal process as an instrument not only for protecting the rights of this peculiarly disadvantaged group of people but more significantly for effecting a more equitable and protective application of welfare law and policy. Just as the battlers for Negro rights found a formidable ally in the lawyer, it was a dramatic revelation to me to realize that here was an almost untapped source of aid. Perhaps you lawyers who are present may think my belated conversion a little naive; on the other hand, you will have to admit that not many lawyers have been brought before bar associations for unethical behav-

ior in aggressively seeking welfare cases! In other words, the neglect has been mutual and this very conference, under Welfare Administration auspices, is a happy evidence of a new rapprochement.

There are, of course, two interrelated approaches to this subject. One is the question of how to assure access to legal services for those whose need is the greatest and whose ability to pay is the slimmest. I would hope that someday the decision of the Gideon case with respect to the right to counsel in criminal actions would be applicable not only to all civil actions—as it is, for example, in Great Britain—but also to all complaints against the governmental bureaucracy—as it is in the Scandinavian countries. But, in the context of my particular concern, the larger question is how these individual legal actions can be most effectively brought to bear on the basic policies and practices of the public agencies that affect so directly the dignity, freedom, and very livelihood of those we currently designate as "the poor."

It is certainly no secret to lawyers that it is frequently *only* the individual case that brings into focus the larger underlying issue of public policy. It is hard to imagine in retrospect just how the total issue of segregation could have been more dramatically advanced than through the case of one individual, Mr. Brown, or how the issue of legal representation could have been better dramatized than through the private troubles of Mr. Gideon. Right now the Supreme Court is preparing to review the principle of relatives' responsibility as a result of the financial burdens placed on the Kirshner family of California in supporting an aged parent in the mental hospital.

This simple truth of our legal system—doubtless taught in the first week of law school, if not taken for granted—has been slow to penetrate the thinking of persons interested in social welfare policy and administration. One reason for this obtuseness may be the confusion between beneficent *purpose* and oppressive outcome. It is relatively easy to understand that a man accused of murder, in danger of losing his life or liberty, may be subject to despotic oppression if we do not surround him with all the protections of due process. It is not yet so well understood that in the realities of the modern world dangers may also lurk within the very *fact* of poverty and the dependence on public aid which poverty entails. We have developed neither the body of law, the corps of lawyers, nor the public attitudes which alone can protect the poor against the successful. This, it seems to me, is the essential topic before this workshop and I would like to put forward a few thoughts that have emerged from my recent experiences in seeking the help of the legal profession in developing new approaches to welfare law. For the sake of economical communication I will put these in the form of four vastly over-simplified propositions.

1. *The distinguishing characteristic of poverty in our time is that it is a* minority *problem.* It is interesting to me that in all the outpouring of words on this subject in the past year, no matter how much alarm is expressed about their persistent numbers, "the poor" are always described as "they." "They" live in a culture of poverty; "they" are caught in a cycle of dependency; "they" must be helped to "lift themselves" out of poverty; "they" must be encouraged to develop "indigenous" leadership. This seems to me a far cry from the days of our immigrant ancestors when escape from poverty was very much a "we" proposition or even the days of the depression where there was scarcely a family that did not feel its heavy, frightening hand.

One of the shrewdest observers of the American scene, Alexis de Tocqueville, gave us timely warning about the dangers of oppression that lurk within majority rule. No function of the law seems to me of greater importance than the protection of the minority against either the disapproval or the beneficent despotism of the majority. And nowhere is this danger more clearly revealed than in the operation of the public welfare agency. For this agency is the instrument of the majority and its clients represent a disadvantaged minority. The very fact that its purpose is beneficent makes its "beneficiaries" the more dependent upon the approval of the majority which pays the bill. "Why," says the hard-working, church-going, respectable taxpayer, "should I be expected to support the shiftless who do not work or save, the immoral who drink up their substance and produce only a succession of illegitimate children, the wanderers who have crowded into my once happily middle-class neighborhood?" And as the next logical step in his thinking he says: "Well, all right. No one should starve. But if they want *my* help, they should do as I say. Newcomers should go home. Mothers should go to work and forego all masculine companionship. Benefits should be given in kind. Men should be made to work under the conditions *I* set. Procedures should be tough, complicated, undignified, and uncomfortable." And, needless to say, he wants to keep costs to a minimum which means low grants and tough eligibility requirements.

Basic to this point of view is the "we"-"they" dichotomy that separates giver and receiver. No respectable member of the affluent society's majority wants to identify with the needy minority, whatever the cause of his need. One of the greatest attributes of social insurance as an alternative source of social income is its avoidance of this problem because the people who benefit are the same people who pay. Of course, I would like to see the poverty-stricken minority reduced to an absolute minimum. But in the meantime, let us recognize that a primary function of the law is to protect members of this

minority, even when their crime or aberration is simply poverty in an affluent society.

2. *In an affluent society laws and institutions are the essential weapons against poverty.* In a poor and under-developed society the central fact of poverty is an adverse ratio between people and the sum total of their productive resources. There is simply not enough of anything to go round and the central problem is to produce more. The problem is at once economic and demographic. People are *positively* important as an instrument of production, their inescapable role as consumers is an awkward and compounding factor in the very problem: hence the rather chilling, if currently fashionable, concepts of "human resources," "human investment," and "human development," which emphasize the role of people as *producers*. But in our country basic production is no longer the central problem (and I don't mean to imply that it shouldn't be increased); distribution and consumption are our major areas of challenge. Not only can we well afford to support our aged, our disabled, our dependent children, and others outside the work economy on a level of decency, but the very health of our economy requires that we maintain a balance between consumption and production. Moreover, the very degree of organization that creates our incredible productivity, makes people the more dependent on organizational mechanisms for their survival and well-being. Ours is essentially an *institutional* society and institutions are essentially a creation of law.

The largest, most prosperous, incorporated business colossus and the lowliest, impoverished, deserted, and despised welfare mother are equally dependent on the instrument of the law. (Though not equally attractive to Wall Street law firms!)

Much as I would like to expand this theme, I can only state it as a fact of modern life and hence a fact of the war on poverty. I am all for neighbor helping neighbor and I think we should not lose the warmth of human existence that personal association in mutual aid implies. But in the long run it takes *laws* to keep our businesses prospering, our educational system expanding, our ailing healed or succored, our vulnerable protected, our cities livable, and those outside our wage system sharing in the vast national prosperity. Is there, for example, any good reason why, in a country where the median family income runs about $6,000 a year, our retired workers should only receive a social security benefit averaging $76 a month or a child on assistance an average of $30 a month? These are problems for law, lawmakers, and the institutional structure, whether we are talking about amendments to the Social Security Act or provisions governing private pension funds and insurance. It seems to be high time that we stopped being intimidated about the essentiality of law to the Great Society—however visualized—by any romantic nostalgia for the pioneer campfire.

3. *In the relationship of individuals to the society in which they live, dignity, freedom, and security rest upon a maximum range of objectively defined rights and entitlements.* Obviously this proposition derives logically from that which preceded. For if we are increasingly dependent on a highly organized interrelationship of laws and institutions, the security and freedom of individuals with respect to that organization depend upon clearly defined rights and entitlements which can be enforced through processes of law. The worker depends both upon his union contract and the protective provisions of labor law; the child is protected by law against abuse, neglect, exploitation, or the vulnerability of being uneducated in a world where education is essential to survival; the businessman is protected by incorporation, by contract, by anti-monopoly and other fair-business laws, by tariffs and many others; the social insurance beneficiary is protected by objective entitlements which are spelled out in law and related to prior contributions and earnings records.

There are many bases of entitlement and I have referred only to a few. From my point of view the most difficult are those that govern in a program like public assistance which is based on the principle of "individual need". For if you proceed on the constitutional principle that all people in similar circumstances must be treated equally, the concept of "need" can *only* be objectified in terms of a ratio between the total amount of money available in a given jurisdiction and the extent of the "need" it must cover. The despised "means test" thus becomes an instrument of equitable distribution. For how else can the public welfare agency assure that the "needs" of Mrs. X receive equal consideration with those of Mrs. Y unless these needs are objectively identified in relationship to the resources available to meet them?

I have given much thought to this problem and I have come to the conclusion that in the long run this can only be solved by a two-pronged approach: first, by reducing to a minimum the extent of actual unmet need by expanding those measures like social insurance which apply to all regardless of need and, second, by expanding those social service functions of the welfare agency that serve all people regardless of economic status. Only in this way can the dichotomy between those who finance and those who benefit be reduced or eliminated. And this, to my mind, is the central problem of welfare policy.

But, in the short run, the availability of legal services to enforce equitable entitlement and protect a vulnerable minority against oppression or indifference can do great service to the cause of a democratic welfare policy and this is the crux of my fourth proposition.

4. *All individuals should have access to legal services and devices of appeal against legislative enactments or bureaucratic decisions that threaten their constitutional rights.* Only in this way can the freedom of individuals be protected in a highly organized society and governmental policy contained within limits that prevent excursions into the discriminatory or oppressive expediences of majority or aggressive minority pressures. Just as we are coming to see that the vulnerabilities of modern society demand that medical service be available to all who need it (and who doesn't?) so we are coming to see the professional role of the lawyer in our complex world in a somewhat different light. He is no longer considered a luxury reserved for the well-to-do. If Mr. Gideon grasped from reading the Constitution in his prison library that lack of professional counsel denied him his constitutional right to due process, why too should not the mothers of Louisiana have demanded the right to counsel? I, for one, do not regard the starving of my children as a lesser penalty than imprisonment. When a child died across the river in Virginia because his parents had not resided in the State for a year, what "due process" protected him from being deprived of life itself?

There are, I think, three basic areas in which welfare recipients and others belonging to the "minority of the poor" need the help of lawyers. In the first place, they need help in securing equal and equitable access to the provisions of the law itself. Few people, for example, understand that the Federal Social Security Act *requires* the public welfare agency to receive and act promptly upon *all* applications for federally-aided assistance. In other words, they have a *right* to apply. Aid cannot be denied, in another example, to a mother of an otherwise eligible child because her home is considered "unsuitable" unless some other provision is made for the child. Few understand how they can exercise their right of appeal. These and the many other provisions of Federal and State law are complex and very hard for people dependent on them to understand. Even lawyers sometimes become lost in the maze, and I am hopeful, as more lawyers struggle to master this complexity, that they will be encouraged to lend a hand to people—like myself—who would like to see these laws and policies simplified so that people can better understand their entitlements.

In the second place many of the people who depend upon welfare owe their very poverty to an ineffectual functioning of legal process or inequitable laws. Perhaps as a woman I am unduly sensitive to the fact that the most despised and deprived group in the population today are the mothers struggling to raise children without the help of their fathers. I am not advocating that we turn the FBI loose to run down all the errant fathers of the Nation but I do

suggest that these women should have the protection of the law and the help of lawyers on problems related to support, separation, divorce, custody, etc. Problems of debt, of juvenile delinquency, of guardianship for the very old or incompetent, the borderline areas of mental illness or deficiency, are all well known to the welfare caseload.

But to my mind the most important of all challenges to the legal profession is protection of the poor, and most particularly the recipient of a public benefit, against a discriminatory application of law—whether the motive be punitive or beneficent in intention. Charles Reich stirred the welfare bureaucracy from one end of the country to another with his Yale Law Journal article suggesting that midnight searches of welfare households might well be unconstitutional. (And I don't for a moment mean to suggest that many welfare officials were not delighted, however startled, by a challenge from this unprecedented quarter.) When Orisen Marden, Shad Polier, Lyle Carter, and others challenged the Federal Government and the State of Louisiana in behalf of 23,000 children whose only crime was the circumstances of their birth this was legal advocacy in the great tradition. When Melvin Wulf of the American Civil Liberties Union pled the thirteenth amendment in defense of five New York welfare recipients put in jail for failure to cut brush in 8 feet of snow, not only the judge but all of us New Yorkers were brought up short. We are simply not used to thinking of New York as a slave State! When the Legal Aid Society of Hartford challenged the right of Connecticut to deport the mother of an illegitimate child, when Marvin Pein challenged Milwaukee to prove its contention that illegitimacy on assistance was automatically tantamount to child neglect, when Edward Sparer challenged the right of a caseworker to decide whether a legal resident of New York would be "better off" in North Carolina, when Mr. Bendich challenged the right of Alameda County in California to discharge a caseworker for refusing to make midnight raids on his clients—these lawyers were crusading for social justice in the highest tradition of the law. I pay them tribute by name—though there are many others—because I feel we in the welfare field need their help and I would like personally to pin a medal on every one of them. They are true and valiant heroes of the war on poverty.

The concepts and institutions of the law are man's noblest social invention with roots that go back to the beginnings of civilization itself. But it seems to me that in our own time we are groping toward a new pattern of interrelationship between its component parts: the assurance of social order, the protection of individual freedom, and the extension of social entitlements. None of us—whether our specialty is the field of law, social welfare, or political organiza-

tion—can, in my opinion, foresee the precise direction of this change but there is not one of us who cannot contribute to its formation. This we can do through our knowledge of individual people and their problems, our efforts to help them solve those problems within the existing framework of law, and our influence in bringing about a better adaptation of the institutional structure itself. This is what the war on poverty means to me and I consider it the great challenge of our day.

Landlord-Tenant Problems

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Poor people to a great extent live in slums—and slums generally mean bad housing. In working in a slum area one of the most immediate problems faced is that of inadequate and often positively dangerous and unsafe housing. In the long run the former is the challenging—the shockingly bad building becomes a publicity piece and the combined efforts of various city agencies will take care of it. The major problem is the inadequate building; rundown, marginal, dingy, forever dirty, forever incompetently repaired and serviced; depressing and demoralizing rather than shocking.

What role does or can a lawyer play?

A lawyer, available on a full-time basis without charge in the neighborhood and working with and through social workers and community organizers, can serve to fill an enormous need which exists among slum dwellers to have legal assistance to aid them in their perennial battle with the landlord. The lawyer can make it possible for them to exercise their legal rights—rights which are often so hedged in technicalities that even lawyers have problems. The uneducated, frequently non-English-speaking people, simply give up. Moreover, there are frequently legal rights and remedies available which the tenant is unaware of. The lawyer-social worker team means that the tenant who seeks advice and help of the social worker can be referred to a lawyer when legal questions are involved, and can educate the social worker to recognize legal problems which most laymen would miss.

Unless and until tenants have lawyers available to them we cannot expect to be able to know, let alone exercise the legal rights which they already have. I will discuss these rights primarily in

terms of New York law, but except for Louisiana which is governed by civil, not common law concepts, landlord-tenant law is basically the same throughout this country and the problems which beset the New York City slum tenant are similar to those of tenants in urban slum areas throughout the country.

Further, without legal counsel available to tenants, the law of landlord-tenant relations cannot be developed and clarified and decisions which are in accord with the realities of modern urban living will not be obtained. While in other fields the law has kept pace with and even set the pace of change, landlord-tenant law has basically stood still because poor tenants do not usually have lawyers and the landlords are satisfied with the law as is.

In New York City tenants have two main forums to seek legal help and redress, the landlord-tenant part of the New York City civil court and the city Rent and Rehabilitation Administration known as the RRA, which administers the city rent control laws. In addition there is limited means of redress in the criminal court. I will take up these areas and explain in some detail what the law, the remedies, and the problems are.

The landlord-tenant part of the civil court is a special section of the general civil court where all cases, motions, and applications relating to landlord-tenant matters are brought. All cities and States have landlord-tenant matters, where they are heard is a matter of local law. The number of cases involved in New York City is the main reason for grouping them all together. A second reason is that in New York City landlord-tenant matters are brought as a summary proceeding. This is true in most States. A summary proceeding is merely an abbreviated form of a regular civil action, designed to give a landlord quick relief against a tenant. It is based on the theory that while it may be all right to force plaintiffs in a personal injury suit or a contract case to wait many months for a hearing or trial, when a nonpaying or nuisance tenant is involved, fast action is required so the landlord may either get his rent or get possession of the apartment. Incidentally, this was not always so. In New York State summary proceedings were introduced in 1820. Prior to that a landlord could not sue for rent or possession of the premises until *after* the lease had expired. Now, with rent payable in advance the landlord may sue for the rent or possession any time after the day the rent was payable. This means a tenant may be liable for rent pursuant to a court order for a period of time during which he hasn't even had possession of the premises.

In the landlord-tenant part of the civil court the tenant is always the defendant or respondent, and the summary proceeding is commenced by the landlord as petitioner. This has several important consequences. First, summary proceedings, unlike other forms of civil

action do not require personal service to commence the action. Although technically the landlord is supposed to make a reasonable effort to serve the tenant personally, in fact, this usually consists of knocking on the door, and if no one answers, using conspicuous service otherwise known as "nail and mail" because the law says one copy must be affixed to the tenant's door and a second copy mailed to him.

Unfortunately, it is my conclusion based on several hundred cases, that the process server almost never "nails," he only mails. Since in summary proceedings the tenant has only 5 days to answer from date of service, the fact that he receives his notice only by mail means he usually has 3 days to answer, not 5. Clearly, if the tenant intends to do anything to defend his case, rather than to just go to the landlord and pay his rent, plus a "fee" for costs of the dispossess notice he is severely jeopardized. Further, the 5-day rule is strictly enforced, so that a tenant must obtain the consent of the landlord or an order from court to file a late answer.

Since personal service is not required, another serious problem often arises—that of nonservice, or what we call "sewer" service, i.e. the tenant is never served at all. The first time he learns an action is pending against him is when he receives the notice from the City Marshal that he is to be evicted in 24 hours. At this point the tenant must have immediate legal help if he wants to defend against the action. If he wants to pay the rent, and the landlord is willing to take it, he will usually be charged a heavy fee for the Marshal's costs—generally 3 or 4 times as much as the landlord would be permitted to collect if the tenant went to court and the court set costs.

If the landlord doesn't want to accept the rent, and once the warrant of eviction has been issued, he doesn't have to. Then the tenant will be evicted unless he obtains legal help. He will require a lawyer to get an order to vacate the final order for the landlord on the ground of nonservice of the original notice of petition and petition.

Because of the scarcity of good low-rental apartments in New York City, and because of the rent control laws which prevent a landlord from terminating a tenant's tenancy whether or not he has a lease as long as he pays the rent (with certain exceptions) a landlord will sometimes deliberately put a tenant out by using the "sewer" service method. This device is also frequently used against a tenant who becomes too aggressive in demanding his legal rights, for example, a tenant who makes complaints to the proper city departments regarding bad conditions in the building.

Once the tenant is in the streets, a major legal question arises which is as yet unsolved. I have presently a case on appeal seeking the answer. The question is, if the tenant engages a lawyer and successfully proves he was never served, so that the entire dispossess proceeding including the eviction is vacated and found null and void, can

the tenant reoccupy the apartment from which he was illegally evicted, if the landlord doesn't voluntarily give him possession? In the case I have on appeal, the lower court said no, the tenant's only remedy was one for money damages. Clearly this is not an adequate remedy particularly in a time of a housing shortage. Nor does it seem just that a landlord should be able to enjoy the fruits of his illegal act, while the tenant having been illegally put out of his home is forced to find another.

Since tenants have for years been illegally evicted, it is a remarkable tribute to the general unavailability of legal counsel to poor people that this question has never been resolved by the courts of New York State. Unfortunately, to an enormous extent, landlord-tenant law has been made by the lowest courts of the state with very little guidance from the appellate courts. This has two very bad consequences. First, since decisions are made by judges of the same level, the decision of one judge is not binding on another. Therefore, striving to get a good decision in one case benefits only that case, unless an appeal is taken. The decision of an appellate court is precedent for all of the courts below it. Without a lawyer, it is almost impossible to take an appeal. Most tenants do not have lawyers, therefore, very few appeals have been taken. Second, since without an appellate decision as precedent, each judge is king in his own courtroom. The law which is applied is extremely uneven, and the results obtained in any one case depend more upon which judge hears the case than the merits of the case, the preparation of witnesses, and the skill of the lawyer if the tenant has one. This does not instill in tenants very much respect for the law—rather it suggests to tenants there really is no such thing as a "rule of law not of men."

Now let us turn to the defenses available to the tenant in a summary proceeding which has been properly commenced.

I divide them into technical and substantive defenses. The first consist of questioning whether the person or corporation named as landlord is actually the landlord; whether the landlord has actually demanded the rent and the tenant refused to pay it prior to commencing the action; and whether the rent demanded is actually no greater than the maximum legal rent for that apartment. (This last defense is peculiar to New York City and arises out of rent control laws.)

The first two defenses serve two purposes, if the tenant actually is willing to pay the rent, but wasn't able to, the defenses, if proved, will either result in the action being dismissed, so the tenant can then pay the rent without any court costs, or the landlord will get a final order but without costs. If the tenant needs time to prepare a substantive defense, getting a dismissal will give him additional time. The third defense goes to whether or not a tenant is being overcharged, which is a frequent problem. (The RRA sets a maximum rent which

the landlord may not charge more than even if the tenant consents.) Once an overcharge is discovered, the tenant is not required to pay more rent than is set by the RRA. Further, the tenant has a claim against the landlord for any overcharge paid during the prior 2 years.

Needless to say, for a tenant to take advantage of any of these defenses, except possibly that of no demand, requires a lawyer. This is why many tenants, when served with a dispossess, simply pay the landlord the rent and whatever he demands as court costs, often up to double the amount he is legally allowed for court costs.

The substantive defenses consist of three, two of which are not as yet clearly law in New York State. I have a case on appeal now seeking a determination that they are good legal defenses. One of these, however, is based on the emergency housing shortage existing in New York City and therefore is not generally applicable. I will not discuss it here.

The first substantive defense provides the basis for the so-called rent strike in New York City, which is actually a misnomer; since it suggests the tenants absolutely refuse to pay rent. Actually what the tenants do is refuse to pay rent to the landlord so that he will bring a summary proceeding for nonpayment of rent. Then the tenant interposes the defense of violations of record tantamount to a constructive eviction and asks for a stay pursuant to Section 755 of the Real Property Actions and Proceedings Law, permitting him to pay his rent to the court until the landlord corrects the violations.

Needless to say, without an attorney it is almost impossible for a tenant to take advantage of this very important legal defense. As a matter of fact, until the Harlem and lower East Side rent strikes in New York, both of which had legal counsel available to the tenants, the law was virtually unused, and lawyers representing tenants invoking that law discovered they not only had to educate the landlord's attorney but the judges as to the existence and provisions of the law.

The same thing has apparently happened in Connecticut, where a somewhat similar law, but with the significant difference that it provides for an abatement of the rent rather than merely paying it to the court, has been on the books since 1875 but is almost unknown and unused although it could provide a major benefit to tenants who live in grossly rundown buildings (47 CGS 24). I have not investigated whether or not other States have similar laws, but it is entirely possible, and also entirely possible that they are seldom used and practically unknown, dependent upon what legal counsel, if any, is available to the poor tenants who would be the persons to take advantage of such laws.

The shortcoming of the New York law is that it rests on violations of record, not actual conditions. That is, unless a code enforcement agency, such as the buildings department, the health de-

partment, or the fire department have inspected the building and found violations of law existing in the building (for example, the landlord by law is required to provide heat and there is no or inadequate heat) and have reported these violations, it is not possible to invoke this defense.

When a case relying on a defense of Section 755 is tried, although the tenants may take the stand and testify regarding conditions in the apartment, the only evidence actually required and without which the case cannot be won, are the records of the code enforcement agency setting forth the violations.

Although Section 755 is a powerful defense, since landlords hate to be deprived, albeit temporarily, of their rents, it does not actually provide substantial relief to the tenants since during the time that the violations continue the tenants are still required to pay the full rent, even though they are not receiving a full consideration or return for their rent.

It is out of our realization that a tenant in a slum building is not getting full consideration for the rent he pays that we are endeavoring to force the appellate courts to recognize the defense of failure of consideration leading to a pro-rata reduction in the rent.

In New York State, as in most States there are numerous laws requiring a landlord to maintain his premises in a habitable condition, to provide heat and water and electricity, and there are standards set by law as to the type of heat, the kind of maintenance and repair, and requirements to keep the premises free of rats, roaches, and other vermin, etc. In other words, the legislature has established standards for what it considers a safe, sanitary and habitable building and requires a landlord to adhere to the standards or to be guilty of a crime.

The difficulty to date has been that although the landlord is criminally liable if he does not adhere to these standards the tenant has not, except in a few isolated cases, been able to avoid his full responsibility to pay rent during the time the landlord does not adhere to these standards.

Because landlord-tenant law is so undeveloped all over the country, courts in New York State and most of the United States are still applying archaic rules relating to the leasing of real property and to leases of apartments in multiple dwellings.

Therefore, although it is clear that a tenant does not rent merely the physical space of the apartment, but also the services and facilites which are necessary to live in the apartment (such as plumbing, water, heat, no rats, etc.) the courts are generally still holding that if the tenant gets all the *space* he contracted for, he is required to pay all the rent.

This is clearly an absurd result which bears no relationship to the realities of modern urban living.

We are challenging this in a case which I tried last June and which is now on appeal. To build our argument on appeal, I have relied on cases from Michigan, Wisconsin, Massachusetts, England, and New York, all pointing in this direction, but none having taken the last final step in flatly asserting that a lease in a multiple dwelling is for space plus services and facilities in exchange for rent, and the failure to provide all of these means a partial failure of consideration which entitles a tenant to either rescind the contract (lease) and abandon the premises, or to affirm the contract and pay a rent reduced proportionately to the failure of consideration.

It is clear from the paucity of cases and by the dates of these cases scattered as they are over the past 50 years, that the failure to have long ago pushed through the concept that we are now fighting for, is related to the lack of legal counsel readily available to those most concerned with this problem—poor tenants.

As another example of poorly developed and little known law, there is in New York State Section 2040 of the Penal Law, colloquially known as a "2040." It is a section of the penal law which makes it possible for a tenant to take out a criminal summons against a landlord who fails to provide heat, hot water, or other essential facilities. (This is separate and apart from the right of the various code enforcement agencies, to issue criminal summons against landlords who fail to correct violations placed by the agency against the premises, a right found in most States.) It is not dependent upon the existence of violations of record, as is the 755 order. However, since it is a criminal charge the question of intent becomes important, and so far the courts have held that any attempt, no matter how small and meaningless, on the part of the landlord to do something about providing heat, etc., will defeat the charge. With a lawyer available to carefully prepare the case and to take an appeal, this could possibly be changed to at least require that the attempt show a reasonable anticipation of success.

Further, the court where the summons is returnable tends to see itself as a kind of mediation—counseling service, not a court of law, and strives to adjust and compromise situations. Unfortunately, while there may be some merit in this, since after all, the tenant is not so much interested in having the landlord fined as he is in having the heat turned on, it works out that the tenant must come to court innumerable times. Each time, he must again tell the judge what his complaints are and what the landlord has or has not done to satisfy the complaints since the last time they were in court. This may go on for months with progress at a snail's pace, so that, in the end, the tenant may well wonder if it was all worth it.

While this court does not require the tenant to be represented by a lawyer, actually to make even a modicum of progress against

the landlord, the tenant needs an attorney, if only to stand up to the judge and prevent the judge from either intimidating or cajoling the tenants into agreeing the landlord is really trying to make repairs, etc. (although in actuality nothing is happening), and therefore to drop the case.

So pervasive is the attitude of the court in favor of adjusting the situation and not actually prosecuting the landlord, that one morning when another attorney had finally succeeded in getting a complaint issued on a 2040 summons, we all cheered and inquired closely as to how he had managed it!

Despite all of the limitations of a 2040, it is a meaningful weapon for the tenant, since many landlords will make basic repairs if faced with a 2040. Apparently the simple fact of receiving a criminal summons has a sobering effect on many landlords. However, this section of the law, like Section 755, was virtually unknown and therefore unused before the various rent strikes, with legal counsel available, got underway. Recognizing how little this Section actually accomplishes and how rarely it is that even a complaint is issued, let alone a landlord fined or jailed, it is amazing to see how eagerly tenants who are apprised of the existence of this statute seek to make use of it.

Again this is a statute which needs to be clarified and developed in its application, and appeals taken to make more definite its meaning.

It also requires a wholesale application of it at the trial court level to endeavor to force the court to treat a 2040 summons with more respect, and to issue complaints thereon on the first hearing date if the tenant is not satisfied that the landlord already has or will make the required repairs. However, without attorneys readily available it is most unlikely that the above will be possible.

Although I believe that today rent control only exists in New York City, and therefore any discussion of the peculiarities of the rent control law will be applicable only to New York City, I will give you a brief sketch of rent control in New York City with a view to demonstrating once again, how an attorney is needed even in dealing with an administrative agency supposedly set up to benefit and protect tenants, and to do away with the necessity for an attorney.

The RRA has the task of administering and interpreting the city rent control laws. It has the power to increase and decrease the maximum rent a landlord may charge for a given apartment. In New York city rent control has been in effect since 1943. It was originally a Federal law, then a State law, and finally in 1962, it was turned over to the city. Since all multiple dwellings in existence in 1943 were covered by rent control, most apartments in slum areas are rent controlled—the various exemptions since 1943 generally do not effect slum

buildings and there are a few buildings built since 1943 which constitute slum buildings, and there are relatively few of these located in slum areas.

In the tenant's fight for better housing, the RRA can be, or should be, an effective aid, since the RRA has the power to, and does, reduce rents because of a "decrease in services," which can range from failure to paint, to rat infestation, no water, and no heat. The reduction of rents is based on the contractual theory of failure of consideration—that is that one only pays for what one gets and rests on the implied assumption that a tenant when contracting or leasing an apartment never contracts for less than a safe and habitable place with all essential services. In fact, tenants frequently contract for less, but faced with the housing shortage in New York City today, they have no choice.

Upon proper application by the tenant, sometimes followed by an inspection of the premises by the RRA, the RRA may reduce the maximum rent, which theoretically is the rent for a safe and habitable apartment with all essential services, proportionate to the actual conditions. The actual decrease may range from $0.50 to the entire rent except $1. The tenant pays the reduced rate until the landlord has or alleges he has corrected the conditions giving rise to the decrease, at which time he applies for a restoration of the rent to the previous maximum. At this point the tenant must be alert, for if the landlord has actually not corrected all of the conditions, the tenant must put in an answer within 7 days opposing the application. It is also advisable to request an inspection. If no answer is put in, the RRA will assume the landlord is correct, the work has been done, and will restore the rents.

All of this can be done by the tenant himself—the RRA does not require, nor is it actually set up, to deal with lawyers. But, understandably for many tenants, the process is too technical to cope with—particularly at the point in which the landlord seeks a restoration of rent when the work has not been done.

In addition to coping with applications reducing or restoring the rent because of lack of services the RRA also handles landlord requests for an increase in rent based on so-called capital improvements which may range from replacing worn-out plumbing pipes with a better grade of pipe to installing central heating. There is provision for the tenants to answer (and oppose) the landlord's application and to protest if an order is granted in favor of the landlord. The RRA has a schedule of what increases in dollars and cents are allowed for each type of improvement, so the whole process is rather cut and dried.

There are two areas, however, which need clarification and definition through legal action, via a protest and appeal to the courts. One

is the application of an RRA regulation which provides that a landlord is not entitled to any type of rent increase if a violation of record exists against the building. This regulation was recently modified to permit an increase if there are only minor types of violations. However, it is quite clear from cases we have handled that increases are regularly granted even when there are violations of record of a serious nature.

For example, in a recent case a substantial increase was granted for "capital improvements" while an application for a decrease was pending because of the numerous violations and general bad condition of the premises.

The second area is the whole question of what constitutes a "capital improvement." Too frequently, when tenants complain because of lack of services the landlord, in putting himself in the position of giving the tenants what by law they are entitled to, entitles himself not only to have the rents restored but to an increase. Naturally this leads to a general feeling of resentment on the part of the tenant who believes it is unfair to make him pay extra because the landford finally provides him with the necessities he is entitled to by law.

Further, the fact that for improvements or repairs which qualify as "capital improvements" the landlord gets extra money means that many tenants receive unnecessary "capital improvements," such as storm windows, while badly needed basic repairs such as plastering holes, fixing loose windows, repairing leaking toilet tanks, are not done.

To make either of these much needed clarifications would require the services of a lawyer which is not generally available to a poor tenant. It is one more illustration of where the law needs to develop but it doesn't and can't because there is no lawyer available to take cases on appeal and fight through the necessary development and clarification.

Although what I have said primarily involves landlord-tenant law as it exists in New York City, the problems which are presented are not unique to New York City. In every State tenants are faced with similar difficulties and the problem of protecting and furthering the rights of tenants who cannot afford to hire lawyers is unfortunately universal.

These are problems which will not be solved overnight, nor will the availability of lawyers to such tenants mean the end of slums and bad housing conditions, but unless and until lawyers are available to poor tenants the problems will not even be attacked, let alone begin to be solved.

Consumer Problems

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At first glance, it might seem strange that the poor have problems in the consumer field that require the services of the legal profession. We are not apt to think of the poor as making major buying decisions in the marketplace, for the simple reason that they have little money to spend. But this reasoning fails to take account of that rapidly expanding American institution, the installment plan. Through the mass media, Americans in all walks of life are bombarded with messages to buy now and pay later. "Easy payments" and "no money down" are the slogans luring even the poor into the marketplace.

If the poor did not have consumer problems requiring legal services several generations ago, this is no longer true today. Unfortunately, substantial numbers of today's poor have met with exploitation in the marketplace, have become almost hopelessly entangled in installment debt, and have been faced with the legal penalties stemming from missed payments.

I became personally aware of these problems, when in 1960, I was asked by several settlement houses in New York City to do a survey of the consumer problems of low-income families. We interviewed almost 500 families living in low-income housing projects in the city. The median income of the families in our sample was about $3,300 and some 15 percent were receiving welfare assistance. Most of the families were members of racial or ethnic minorities: 45 percent were Puerto Ricans, 30 percent Negro and 25 percent white, exclusive of Puerto Ricans. Relatively few, only 17 percent, were natives of the city. The rest were migrants, generally from the South or Puerto Rico. Their educational level was quite low. Only 17 percent of the family heads had completed high school and about half did not continue their education beyond grade school.

Their place of origin, their ethnicity, their low educational level, all suggest that these consumers are products of more traditionalistic cultures, poorly trained in the ways of urban, bureaucratic society. This fact underlies many of the problems they encounter as consumers.

Consumer Practices of the Poor

In spite of their poor economic positions and poor credit status, most of the families were active as consumers of major durables. For example:

Ninety-five percent owned at least one television set.

More than three in every five owned a phonograph.

More than two in every five owned a sewing machine.

More than two in every five owned an automatic washing machine.

More than a quarter owned a vacuum cleaner.

One in every seven families owned an automobile.

Most of the families had moved into public housing during the 5-year period preceding the study, and most of them had bought a good deal of furniture in that period. The typical family bought sets of furniture for at least two rooms when it moved into the project and had spent approximately $500 for furniture.

The prices they paid for appliances were quite high. Forty percent paid more than $300 for their TV set and 13 percent paid more than $500. A number of families owned expensive combination television and phonograph sets and one family reported paying as much as $900 for such an appliance.

As expected, we found that the great majority of these families used installment credit to make these purchases. Approximately two-thirds of the appliances owned by these families were bought on credit and 80 percent had used credit to buy at least some of their major durables.

Partly because they are so dependent upon credit, and partly, I suspect, because they are intimidated by the large downtown stores, most of the families bought their major durables from neighborhood merchants and from door-to-door peddlers rather than going to the large department stores and discount houses. The neighborhood merchants are prepared to accept great risk by extending credit to low-income families. They protect themselves, in part, by having exorbitant markups on their low quality merchandise.

More than 60 percent of the families we spoke to had outstanding consumer debts. Their precarious financial situation is indicated by the fact that few had any savings to back up their debts. Only 27 percent had at least $100 in savings.

Their lack of shopping sophistication and their vulnerability to "easy credit" would suggest that many low-income families encounter serious difficulties as consumers. The study found this to be true. One in every five had experienced legal pressures because of missed payments. Their goods were repossessed, their salaries were garnisheed, or they were threatened with garnishments. Many of the families in this position had heavy credit obligations that reached crisis proportions when their income was suddenly reduced through illness or unemployment. The following account given by a 27-year-old Negro husband is typical:

I first bought a bedroom set. I still owed money on it when I wanted a living room set. I went back to the store and bought the living room set on credit. At that time I was working and making good money. That was two years ago. Six months ago I got sick and stopped working. And so I couldn't pay anymore . . . . *When I got sick, I still owed $288. Last week they sent a summons saying I have to pay $440, not $288. We have to pay, but what I'm going to do is pay the $288, not the $440.*

Like many of these consumers, this young man did not understand that he is liable for the interest on his debt as well as court costs and legal fees.

Inability to maintain payments was not the only problem these consumers encountered. The merchant's failure to live up to his obligations created difficulties for a much larger proportion, some 40 percent. This group includes families who were seduced by "bait advertising" and high-pressure salesmen into buying much more expensive merchandise than they had intended, families who were given erroneous information about the costs of their purchases, and families who were sold, as new, merchandise that had been reconditioned.

The many incidents of "bait advertising" uncovered in the study can be illustrated by this typical experience of a 26-year-old Negro housewife:

I saw a TV ad for a $29 sewing machine, so I wrote to the company and they sent down a salesman who demonstrated it for me. It shook the whole house, but I wanted to buy it anyway. But he kept saying it would disturb the neighbors by being so noisy and he went out into the hall and brought in another model costing $185 . . . . I actually had to pay $220. He promised if I paid within a certain amount of time I would get $35 back. But since my husband was out of work, we couldn't pay within the time period, so I didn't get the refund . . . . I was taken in by the high-pressure sales talk.

It should be noted that these high-pressure techniques often result in converting cash customers into credit customers. People who have every intention of paying cash when they answer the ad for the cheaper item suddenly find themselves buying much more expensive merchandise on credit.

These two kinds of problems, legal difficulties resulting from missed payments and exploitation by merchants, are not always independent of each other. Some families capable of maintaining payments stopped paying when they discovered that they had been cheated. But instead of gaining retribution, they were more often than not subjected to legal sanctions brought upon them by the merchant. This process can be seen in the experience of a 28-year-old Puerto Rican man:

I bought a set of pots and pans from a door-to-door salesman. They were of very poor quality and I wanted to give them back but they wouldn't take them. I stopped paying and told them to change them or take them back. I refused to pay . . . . They started bothering me at every job I had. *Then they wrote to my current job and my boss is taking $6 weekly from my pay and sending it to pay this.*

It is not clear from his account whether he had lost some of his previous jobs because of the efforts to garnishee his salary; this does happen with some frequency. Many employers simply will not be bothered with garnishments and do not hesitate to fire workers whose salaries are attached.

As the previous incident suggests, the laws regulating installment sales unwittingly act in favor of the merchants, simply because these traditionalistic consumers have little understanding of their legal rights and how to exercise them. By taking matters into their own hands and stopping payments on faulty merchandise, they only bring additional troubles upon themselves.

There is another aspect to this unwitting result of the legal structure. The merchants who offer "easy credit" frequently sell their contracts to a finance company. Many low-income consumers do not understand this procedure. When they get letters instructing them to make payments to a finance company, they mistakenly believe that the merchant has gone out of business and assume that nothing can be done about their problem. The practice of selling contracts to credit agencies thus often has the consequence of absolving the merchant of his responsibilities to the consumer, not because the law gives him this right, but because the consumer does not understand what has happened.

In keeping with their inadequacies as consumers in a bureaucratic society, most of these families had no idea of what they could do about their consumer problems. When asked directly where they would go for help if they found themselves being cheated by a merchant, some 64 percent said they did not know. They could not name any of the community agencies equipped to deal with these problems, such as the Legal Aid Society, the State Banking and Finance Department, the Small Claims Court, or the Better Business Bureau. The Better Business Bureau was the agency most often cited by the minority who had some idea where they could go for professional help. Quite

significant from the viewpoint of this conference, is the fact that only 3 percent of the families said they would turn to a private lawyer for help.

Ignorance of sources of help is only part of the problem. Many of the families who do know where they can get help apparently do not act on this knowledge when faced with a consumer problem. Although more than a third cited some source of professional help, only 9 percent of those who encountered problems actually sought professional help. This failure to use professional services for their consumer problems cannot be explained away wholly by ignorance or even by apathy. All too frequently there are realistic obstacles that stand in the way. Sometimes the low-income consumer feels that he cannot afford the time that it takes to get professional help. This attitude is implied in the account of a Puerto Rican man:

My wife and I bought some furniture and for the first few months we paid the store. Then the store sold out to another one and we had to pay the second store. They told us they had no record of the money we had already paid and said they would take us to court if we didn't pay them $150 more. I'd rather pay the money than go to court and take time off from work because I just got my job and I don't want to lose it.

There is one other aspect of the consumer problems of the poor that at first glance seems to imply that they are apathetic, but which on closer examination, often has another cause, and that is the frequent judgments by default entered against these consumers when they are brought to court by merchants. To illustrate this, I would like to read you an incident described by a Negro housewife. She had agreed to buy a watch from a door-to-door peddler for $60:

I gave him $3 down and I got a payment book in the mail. About a month later I had the watch appraised in a store and I found out it was worth only $6.50. I called up the company and said I wouldn't pay for it, that they should come and get it. They told me I had to pay or they would take me to court. And I said, "Fine, take me to court and I'll have the watch there." The next thing I knew about this, I get a court notice of Judgment by Default for the $69 balance, $5 "costs by statute" and $14 court costs. [Shows interviewer the judgment.]

It should be noted that this housewife was eager to present her case in court but only learned about the court proceedings when she was notified of the judgment by default.

Judgments by default are quite frequent in cases involving low-income consumers; probably a majority of the cases are decided this way. Often, the consumer is at fault; he may not fully understand the legal actions taken against him; he may be reluctant to take time off from work; the court may be located some distance from his home; or he may simply forget. But many times the consumer's failure to

appear in court is the result of his *never receiving the summons.* In these actions, the summons is drawn up by the plaintiff's lawyer who hires a process server to deliver it to the defendant. Process servers sometimes evade their responsibility. This happens with sufficient frequency that a special term has evolved in legal circles to refer to it, "sewer service."

Instead of finding the defendant, the process server simply throws the summons away. Low-income families are especially likely to be victims of this practice since they are not apt to know how to protect their legal rights. Merchants are well aware that judgments by default are common and take advantage of this fact. However poor the merchant's case may be, he can count on winning a certain proportion simply because the consumer does not show up to defend himself. This is another aspect of the poor fit between these more traditionalistic consumers and the role they are expected to play in our bureaucratic society.

I hope I have given you some picture of the great need that low-income families have for the services of the legal profession in coping with their consumer problems. In closing, I should only like to add that these services must be made readily available to the poor in their own neighborhoods if they are to benefit from them.

SUMMARY OF DISCUSSION

The Legal Needs of the Poor

The major points developed in the discussion of the legal needs of the poor were in the areas of family law and the administration of welfare.

In relation to family law, a conferee noted a widespread and mistaken assumption that the poor family, except for its lack of jobs, education, and a bank account, is just as intact and integrated as a middle-class family. This view overlooks the fact that poor families are frequently very badly organized, due to no legitimate marriage initially, or to a succession of men in the home, or to children separated from their parents and scattered in the homes of distant relatives, or to a number of other reasons. Such disorganization creates needs to which laws affecting family life may not be responsive.

The statement was complemented by the suggestion that basically middle-class attitudes are prevalent in the formulation of law governing family problems. This suggested a further aspect of the often-deplored lack of any political voice raised in behalf of the poor. It was noted that since the demise of the local political "boss" the poor have been without political recourse. Reference was made to the recent recommendation that legal aid agencies assume the role of lobbyists for the poor, to act in the same fashion as lobbyists hired by more organized and affluent groups such as industry and labor.

Two instances were mentioned in which either the law or its administration has failed to take account of the disorganization of the poor family. The first is in those cases where access to public housing is denied a poor family because, due to a desertion or some like reason, there is no man in the family. Families most desperately needing such housing often lack a male head of the household; criteria for housing which require the presence of such a figure are thus unrealistic. The second situation related to a State welfare department practice

which has been recently amended in consequence of a proposal of the State bar. The practice of the welfare department had been to reduce the sum paid to a family on welfare by the amount of any support payment order issued by the family court against the husband. Theoretically this was a logical practice, which would maintain a steady but never excessive income for each beneficiary family. In fact it caused havoc in such families when, as is too frequently the case, the husband disappeared or otherwise failed to make regular payments under the family court order. Under the revised practice, if the woman of a poor family so requests, the family court orders the husband to make support payments directly to the welfare department, which is subrogated to the woman's right to such payment. The check from the department to the woman thus never varies in amount, and the beneficiary family is no longer subject to the whim of an irresponsible husband.

The point was made that while indigent persons seeking legal assistance in a divorce situation should not be required to accept counseling prior to a divorce action, many indigents do not in fact truly desire a divorce and that in such cases counseling serves as the medium through which reconciliation has often been quickly effected. One panelist asserted that a poor person should not be subject to a counseling requirement which the rich man could avoid. A conferee suggested counseling should be imposed as a requirement on all seeking divorce, irrespective of economic status. This was objected to on the ground that state-supported marriage counseling procedures have not proved successful, at least in one notable experiment in Utah, and are fraught with numerous peripheral complications. For complete development of this point, see Professor Bodenheimer's study of the since-repealed Utah law on marriage counseling at 7 Utah Law Review 443 (1961).

Finally, the suggestion was made that in the papers dealing with welfare department practices, such as late night raids on welfare recipient homes to determine whether there was a man in the house or claims for children who were not members of the family, the point had not been made clear enough that the State had a legimate interest in protecting the tax rolls from fraud. This drew the response that the legitimate interest of the State must never be upheld by methods which infringe individual liberties and attenuate the right to privacy. Such rights are no less the possession of the poor man than of the rich, and cannot suffer dilution because an individual is a welfare recipient. There was also criticism of State welfare policies which deny assistance because of the presence of a man in the house. Instead of saving money for the State, this often increases welfare costs, since the man leaves, and the mother and children become perma-

nently dependent. The point was reiterated that in all these interrelated areas—eligibility policies, devising investigatory practices that protect against fraud, and protecting the rights of individuals—increased legal services are essential, both in representation of welfare applicants and recipients, and in counseling of administrators.

PANEL II

New Legal Services for Economically Depressed Metropolitan Areas: The Neighborhood House Concept— Organization and Administration

INTRODUCTION

The structure, experience, and inter-organizational relationships of three legal service programs for low-income communities in New York, Boston, and New Haven were the subject matter of three presentations on this panel. The fourth was focused upon problems presented by the question of lay intermediaries, as defined in professional canons, in such programs.

In New York, the legal services unit under discussion was developed within the Mobilization for Youth program. The inevitable "institutionalization of service through complex social organizations" can be lessened, according to the panelist, by the device of reaching out into the community by placing services in informal, congenial settings such as storefront offices, apartments, etc., and making services readily available. Equally important, MFY has found that "avoiding prejudgments as to appropriateness of service requested" is one of the ways in which the neighborhood service can "overcome the inadvertent selectivity of the large central service organization."

A highlight of the Boston program is its experimentation with the location of offices offering legal assistance. Three offices offering legal services are placed within multiservice centers—a fourth is set up in the manner of a more conventional, individual law office. It is hoped that valuable data as to utilization, types of problems presented, and characteristics of clientele, as they relate to the physical location of the service, will be developed in this experience.

In New Haven "neighborhood lawyers" in the legal services program are, in addition to providing legal counsel and service, "investigating the basic causes of social-legal problems . . . ; attempting to prevent social-legal problems . . . ; educating the residents of the neighborhood in basic legal rights having to do with such things as income tax, leases, conditional sales contracts, arraignment, liquor, commitment, and the use of social services." A mere listing of these activities reflects the potential scope of a well-structured legal services project.

The fourth panelist stated that revision of the canons governing the professional ethics of lawyers was essential if the legal profession is to respond to the legal needs of the poor. As an example, the panelist cited canon 35, under which legal aid organizations and other charitable corporations or agencies which render legal aid to the poor, are considered "lay intermediaries." Therefore, under this canon, a lawyer should not practice law while in the employ of such an agency because "such employment may intervene between him and the client, control his services, or direct the performance of his duties."

The panelist also urged that the rules against advertising and soliciting be revised so as to permit legal service programs to pursue more aggressively the education of the low-income community as to the nature and availability of the services offered. According to the panelist, the present rules make it most difficult for lawyers to "get the message to the lowest echelons in our society that law and justice is for them too."

The Need for a Neighborhood Legal Service and the New York Experience

Charles Grosser
Deputy Director
Mobilization for Youth

Scant recognition has been given to the fact that the provision of services to citizens, when it is stipulated by specific legislation, is a matter of right, not a "charity." When these services are not provided as stipulated, the service agency has abrogated the rights of the client and is guilty of subverting the intent of the law, if not of violating the letter. Redressing grievances of this kind cannot be a matter of noblesse on the part of the public agency. Yet neither law nor social work, the professions most directly concerned, has devoted itself to dealing with this issue. The rights of clients to public services as a matter of inherent social justice, although articulated by some social-policy planners,[1] have been observed more in the breach than in the reality.

The Legal Services Unit of Mobilization was proposed as an attempt to meet some of these needs. With the opening of the action phase of the Mobilization for Youth program, it soon became apparent that the legal problems of residents were of great magnitude and that the successful operation of the program required the development of some stratagem for dealing with these problems. It was decided therefore, to incorporate legal services as part of our demonstration design and to develop techniques for making full use of the existing legal resources in the community. The VERA Foundation was therefore asked to study our program for several months and to submit a proposal for a legal services unit.

The final proposal, prepared by VERA and amended by Mobilization's Board of Directors, was discussed in detail with repre-

[1] Cf. Neva L. Itzin, "The Right to Life, Subsistence, and the Social Services," *Social Work*, III, 4 (October 1958).

sentatives of the Legal Aid Society, administrative judges, the district attorney's office and the bar association, so as to avoid conflicts of jurisdiction with existing legal entities. The proposal was then submitted to a committee of the board comprised of those members who were trained in the law. Although it had been thought that the unit might be sponsored entirely by Mobilization for Youth or contracted to the VERA Foundation, the committee urged that a law school be sought out to undertake sponsorship, both to absolve Mobilization from responsibility in an area in which it had no explicit mandate and to provide the unit with a mantle of respectability of the highest order. Since the law school of Columbia University, the academic sponsor of Mobilization, was prohibited by administrative restrictions from sponsoring service projects, a group of faculty, acting unofficially, agreed to constitute themselves an advisory committee. Two faculty members of the New York University Law School joined the committee at the invitation of their Columbia colleagues.

It was agreed that the committee would advise the unit regarding policy matters of law and that the Board of Directors would set the overall framework within which the unit would function. No thought was given at this point as to the possible substantive consequences of the engagement of the faculty committee in charting the course of the unit, though, as we shall indicate it turned out to have a strong influence on its ultimate character.

Subsequent to the formation of the advisory committee, the legal unit received permission from the courts under section 280 of the penal law to provide legal services to those unable to afford them. This section of the law, designed to prevent interference in the lawyer-client relationship, has the unintended consequence of inhibiting the practice of poor man's law.

The final proposal sought to establish a staff of four attorneys, augmented by volunteers, law students, and the personnel of Mobilization for Youth, and specified the major activities of the unit, as follows:

1. Provision of referral and preventive legal services;

2. Legal orientation of lay community leaders, professional staff, and clients; and

3. Use of the law as an instrument of social change.

The major area of concern, specified by the legal staff after consultation with general program staff of the project, is the poor man's rights vis-a-vis such public services as welfare and housing. The unit has also concerned itself with certain aspects of criminal law (particularly pre-trial representation of youth), with consumers' problems, and with the development of meaningful cooperation between lawyers and social workers.

When referral to appropriate private agencies, particularly the Legal Aid Society, or to such public agencies as the Consumers' Fraud Bureau is called for, the legal unit endeavors, through comprehensive preparation, to facilitate the speedy disposition of the cases and demonstrate efficacious use of existing resources.

In cases for which existent legal programs do not provide resources or when the project finds that certain law or administrative procedures cause pervasive problems among indigent clients, the unit undertakes direct representation.[2] The legal staff have been particularly interested in providing, through the services of lawyers, for the distribution of the resources of certain public agencies as a matter of right vested in law rather than as the largesse of the conferring official or agency.

It is hoped that the legal orientation of project staff, community leaders, and residents will diffuse throughout the community sufficient legal knowledge and sophistication to enable the residents to seek legal redress when appropriate. The use of the law for social change through advocacy and representation evolved as a major emphasis of the unit and was the one which would do most to familiarize local residents with the fact that the law could be their champion as well as their enemy.

The legal service unit is currently staffed by four attorneys, and is physically located within the administrative office of Mobilization for Youth. However, the intensity and scope of its activities are greater than this figure and location suggest. Legal services are actually made available by some 400 staff members of Mobilization, including social workers and indigenous family aids working in storefront service centers, streetworkers assigned to antisocial gangs, crewchiefs and vocational-guidance counselors training unemployed school dropouts, community organizers attempting to bring residents together in self-help efforts, recreation leaders and group workers in mass youth organizations, teachers and guidance counselors attempting to reduce problems of school-community relations, and clergymen, social workers, and community leaders in local agencies and institutions providing services as part of Mobilization for Youth's contract program.

The cases referred by these workers reflect, to an extraordinary degree, the basic needs of impoverished slum residents. However, by the nature of the program, the various political, housing, educational, and other grievances of the urban poor are filtered through a battery of service personnel in the process of determining their amenability

[2] The New York State Welfare Abuses Law is a case in point. The application of this law produced problems for so-called nonresidents at a rate which precluded the intervention of social workers on a one-to-one basis. The legal unit therefore undertook to solve the problem for all clients in this category, and has in fact done so. This was accomplished by successfully taking a case through a fair hearing procedure conducted by the New York State Department of Welfare.

to legal intervention. This process somewhat distorts the nature and limits the scope of the grievances. It is our hope that workers' awareness of the distortion, their commitment to serving the needs of the indigent community, and the rooting of the program in the local neighborhood at least partially compensate for this limitation.

The institutionalization of service through complex social organizations is unavoidable. Despite the canons of the bar sanctifying the particularistic relationship between attorney and client [3] the plain fact is that the services of counsel are rarely made available except through the offices of some intervening social organization—unless, of course, the client is a rich man. The poor man has no direct access to a lawyer, nor have any practical suggestions been advanced by which direct access without an intervening agent may be realized. We, therefore, attempt to create a new entity or utilize an existing one that is sufficiently congenial and dedicated to provide a level of service which will effect "the translation of an ethic of benevolence into a statutorily affirmed constitutionally guaranteed legal right." [4]

This search for new instruments to meet the needs of the urban poor pervades the present thinking of most service fields. Social work and medicine, in particular, have been grappling with this problem, having realized that, in the main, they either fail to serve or underserve the poor. Some of the consequences of the development of large-scale organizations are increased formality, red tape, the delaying of gratification, centralization, waiting lists, highly explicit eligibility requirements and rigorous means tests, and an impersonal atmosphere which produces a loss of individuality. Service organizations, public and private, share to one degree or another these attributes. These consequences, difficult as they may be for the articulate, knowledgeable, middle-class person are of sufficient magnitude for lower-class folk as to keep them from contact with such organizations. Differential distribution of community resources resulting from this alienation which low-income persons experience is reflected in many studies documenting the disproportionate representation of lower-class minority persons in various service programs.

In his history of the New York Legal Aid Society, Harrison Tweed, a former president of the society states

No appraisal of the services of the society can ignore the fact that the number of applicants for help on the civil side has not increased over the last forty years, during which there has been such a vast increase in the population of Greater New York.[5]

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[3] One might also cite in this regard the Hippocratic admonitions to the medical practitioner, or the code of ethics prescribing the conduct of social workers.

[4] A. Delafield Smith, *The Right to Life,* Chapel Hill, N.C.: Univ. of North Carolina Press, 1955, p. 60.

[5] Harrison Tweed, *The Legal Aid Society in New York City, 1876–1951,* The Legal Aid Society, New York, N.Y., 1953, p. 96.

Mr. Tweed suggests that this is a result of a lessening of legal needs of the poor caused by a decrease in immigration, the existence of claims procedures which do not require a lawyer to be present, the increase in the provision of direct and indirect legal services by unions and political clubs, the improvement of business practices, and the redistribution of income. The argument can be made, however, that the legal needs of the poor have not decreased, but that alienation and self-selection, identical with those experienced by other professional institutions, are the cause of the phenomenon.

The existence of unmet needs, or of number of unserved eligible recipients is a mandate to seek new organizational forms by which to provide service. Reaching out into the local community, located in informal congenial settings (storefronts, apartments), making services readily available to all, and avoiding prejudgments as to appropriateness of service requested are ways in which the neighborhood idea can overcome the inadvertent selectivity of the large central service organization.

Too often, we seek our solutions in the talents and dedication of outstanding individuals. But the image of the individual entrepreneur, the symbol of an earlier day, is no longer realistic. The majority of practicing professionals work directly for large formal organizations, and most of those who do not are so dependent on such large organizations as to make the distinction academic. We know that location within such bureaucratic entities profoundly affects behavior in many ways. The organization determines who shall be served (and, therefore, who shall not be served) and how service shall be given (even to the technical strategies of intervention). In addition, it explicitly prescribes the routes by which the professional rises within the organization's hierarchy and institutes a system of rewards and sanctions. All this is done in the interest of orderliness and organizational stability. The result, it has been suggested, is that professionals have become sensitive to a set of pressures which are distinct and apart from the needs of the client. It has been suggested too that they have become cautious, conservative, and conforming.[6]

But such is the context within which we practice our skills—not that of a Paul Muni in dangling suspenders, or George C. Scott, with shirt open and tie askew. We are not suggesting that we simply resign ourselves to our lot. Recognizing the inevitability of filtering the legal needs of the poor through a modern bureaucracy is the first step in dealing with the problems thus created.

Important precedents have been set by recent United States Supreme Court decisions upholding the right of a collectivity to hire

[6] Cf. Robert K. Merton, *Social Theory and Social Structure*, Glencoe, Ill.: Free Press, 1956, Ch. VII.

counsel to represent individuals.[7] These decisions remove legal restrictions on the creation of instrumentalities to provide for the legal needs of the poor.[8] Our efforts in the past, based on the puny resources of the individual or the magnanimity of the enlightened community, could be only residual and rehabilitative. Now our horizons may be broadened to consider permanent solutions, not necessarily by the elimination of the problem, but by the establishment of social machinery which will continuously and dispassionately deal with it. Our task, then, is to recognize the potential function of organizational strategies in facilitating the good life so that we may master their intricacies and turn them to our purpose.

The Legal Services Unit of Mobilization for Youth is an attempt to do just this. It is not our contention that the approach of this unit is the only and best way of dealing with the issue. There are, in fact, many viable alternatives.[9] The unit, however, reflects the uniqueness of the program of Mobilization, its setting, and the many distinctive forces with which it must deal.

One such force is the board of directors of Mobilization for Youth, which is made up of representatives of the neighborhood, social agencies, the city of New York, and Columbia University. This board is a microcosm of the total community, representing a variety of interests with overlapping membership, differing sources of influence, and a multiplicity of strategies and tactics which come together and separate from issue to issue.[10] Among the members of the board with particular interest in legal matters are members of the judiciary, the commissioners of the major city departments, a former officer of the existing legal aid organization, social agency executives, and practicing attorneys. The various private special-interest groups, best exemplified by the real estate associations, and the clients themselves, the residents of the lower East Side, constitute two additional forces relevant to the provision of legal services to the Mobilization for Youth target population. The former are apparent for the aggressive volubility with which they press their interests, the latter because in the main they are without voice.

As Philip Selznick has said:

. . . all formal organizations are molded by forces tangential to their rationally ordered structures and stated goals . . . . Moreover, the organization is embedded in an institutional matrix and is

[7] *NAACP* v. *Button* 371, U.S. 415; *Railroad Brotherhood* v. *Virginia* 377, U.S. 1.

[8] Much as we have provided for such needs as those associated with disability, old age, unemployment, etc.

[9] E.g., the Ombudsman system developed in the Scandinavian countries, the Citizens' Advice Bureaux and governmental-subsidy plan of Great Britain. The approaches being demonstrated in the projects of the President's Committee on Delinquency throughout the country have already added to the 80-odd years of experience amassed by the Legal Aid Society.

[10] Cf. Nelson W. Polsby, *Community Power and Political Theory*, New Haven, Conn.: Yale University Press, 1963.

therefore subject to pressures upon it from its environment to which some general adjustment must be made. As a result the organization may be viewed as an adaptive social structure.[11]

The Mobilization for Youth Legal Services Unit, no less than any other formal organization, must cope with these forces. Surely the limits of rationality must be strained by the image of a project, funded heavily by the city, undertaking the task of representing the legal needs of the poor under a hypothesis which makes the city itself the likely object of such legal activity. It would seem that such a dilemma could be resolved only by betraying the interests of the client or by becoming totally alienated from the city; yet such is not the case.

The mechanics of this phenomenon have an infinite number of combinations. In one instance, those on the board who urge discretion in dealing with the city and predict dire consequences for the organization are complemented by the legal advisory committee, which reminds the board that once a lawyer has undertaken to represent a client (under policy set by the board) the ethics of his profession permit nothing to interfere with the diligent pursuit of his client's interest. The committee may further point out that permission to practice law granted by the court to the legal unit was predicated on this diligence. When in turn the advisory committee expresses a preference for research and documentation, rather than representation, and voices its pessimism over the precedent-setting ability of test cases, lawyers and social workers pressed by the daily demands of a service-based program point out that the efficacy of the neighborhood-law concept will not be tested if these demands are ignored.

On the other hand, the social workers' plea that all needs be met brings forth the rejoinder from the lawyers that resources are finite and that the general notion must be tested on the basis of a selected caseload. It is further argued that such caseload must not duplicate services offered elsewhere and must be such that the advocacy of counsel will be particularly potent. Finally, at the same time that groups of landlords pressure funding sources to interfere with the organization because of its actions regarding rent withholding or reduction, 13,500 residents of the lower East Side sign a petition and 750 professionals and friends in the city take an ad in support of the project.

Institutional sponsorship, entailing the use of public funds, is the sine qua non of strategies for dealing with the legal (and other) problems of the poor. At the same time, because of the heavy involvement of the poor in the welfare establishment, the public agency frequently becomes the target of the intervention. When these strategies involve advocacy, as in the law (and even when they involve conciliation, as in social work), we are faced with the accusation of biting the

[11] Philip Selznick, *T.V.A. and the Grass Roots*, Berkeley, Calif.: University of California Press, 1949, p. 250.

hand that feeds us. Understandably, (the admonition, "it's good to be sued," made by Elizabeth Wickenden to the 1964 Eastern Meeting of the American Public Welfare Association, notwithstanding) the targets of legal action see themselves as combatants rather than allies. That this will continue to produce stress is clear.

The experience of the legal services unit is a part of the total experience of the Mobilization for Youth project. Its active pursuit of the interests of the poor have paralleled those in education, employment, social services, and community development. All these efforts will be futile if we are unsuccessful in identifying the social causes of human failure or, once having identified them, in developing effective strategies for eliminating them. Failure can also take place if society is unready or unable to incorporate what we have learned and can offer no more than token services.

We at Mobilization for Youth believe that we have already acquired enough experience to know that, given the opportunity, the problems of poverty and deprivation can be banished. The catalytic consequences of precedents established by law can be of significance in determining whether such opportunity is historically at hand.

The Boston Neighborhood House Proposal

William Wells
Action for Boston Community Development

This very week, in a rather unimpressive ceremony, in which the accountant at Action for Boston Community Development grumpily agreed to dispatch a check to the Boston University Law School, Boston's Unified Legal Service program was launched.

It was a long time aborning. It all began with a tentative little letter in May of 1963 to the National Legal Aid and Defender Association which said something like, "We hear you have money. Tell us about it."

A few months later the first ambitious proposal for a legal service program, a program which would tie together in one agency, defender, legal aid and social services, was presented for review to about 40 of the leaders of Boston's bench and bar in a meeting at the Parker House.

The program I'm about to describe bears only a vague resemblance to that original proposal. It is, rather, the product of the suggestions and criticisms voiced at that meeting, the realities of Boston's historic legal services for the poor, and the hours and hours of discussion and negotiation that followed the first meeting and, I might add, are still in process.

The core of that old proposal still remains, however, in the extension of legal aid services on the civil side into neighborhood law offices located in multiservice centers in the city's three areas of lowest income.

The purposes of the program are to bring together in working partnership the agencies and law schools currently offering legal assistance to the indigent, to encourage new approaches to providing such services, and to place legal services in a social welfare setting.

It is one program, coordinated by a director and a legal service program committee representing board members of the participating

agencies, the law schools and the bench, but it is also a combination of programs directed at a variety of different needs.

Its largest element is a model defender project which will place defender attorneys in each of the nine district courts in Suffolk County, a county of 800,000 people embracing the cities of Boston, Chelsea, and Revere, and the town of Winthrop.

A bail program modeled on that of the VERA Foundation and utilizing the combined services of students in a criminal law seminar at Boston College and probation officers will be located in the Roxbury District Court, the busiest criminal court in the city.

That same court will be the setting for a Boston University student defender project in which the student participation will be a part of a curriculum course and the students will be graded on their courtroom performance.

Another feature is a post-conviction program for inmates of the State's penal institutions who desire and need legal services. This will be carried out by the United Prison Association of Massachusetts, a private agency, utilizing a staff of volunteer attorneys.

Before developing the details of the program, I'd like to say a word about ABCD, in order to clarify how ABCD's own purpose and policies shaped the legal service program.

ABCD is a private, nonprofit corporation whose board of directors represents a cross section of the city's governmental, educational, business, labor, religious, social agency, and community leadership. We differ fundamentally from our counterparts in New Haven, New York, and elsewhere in that we are deliberately not a direct service agency. We see our role as planning new approaches to the solution of social problems, persuading private and public agencies and institutions to undertake those approaches, financing the new programs during their demonstration period, and scientifically evaluating them to determine their usefulness.

A primary concern in this evaluation is to establish guidelines and priorities to assure a more efficient and meaningful use of the limited private and public financial resources at our city's disposal. I need not remind you that Boston is, as cities go, a poverty case itself.

A second backdrop to understanding the legal service program is the fact that it is one part of what we call the Boston Youth Opportunities Project, a project financed through the President's Committee on Juvenile Delinquency and Youth Crime. The objective of the project is to reduce the number and seriousness of delinquent acts committed by teenage youth in three areas of Boston marked by low income, low educational achievement, high crime and delinquency rates, high unemployment, deteriorating housing, and severe social problems. These areas, Roxbury, the South End, and Charlestown, together, constitute the study area for the youth opportunities project.

The project consists of three distinct parts, programs in education, employment programs, and community service programs. The first two directly serve the youth in the target group. The community service programs are intended to determine whether treating problems of a youth's older brothers and sisters and parents will change the youth's behavior. Chief among these community services are multiservice centers established in each of the three target areas. Another is the Unified Legal Service program, based, in part, in the multiservice centers.

These multiservice centers bring together in one location in a neighborhood an array of services—legal, educational, employment, health, family counseling, child service, and others. They are based on the theory that residents of low income, disadvantaged, minority group areas cannot be depended on to travel into the center of the city when they need assistance. They include reaching-out services which will go directly into the homes of those needing help. Most important, they will provide an easy machinery for referring problems from one service to another.

In the latter, the centers reflect a concern with treating the totality of each individual's and each family's problems. They assume that an individual cannot be depended on, when referred to another agency, to journey across the city to visit that agency. Thus, the multiservice centers bring these existing agencies together under one roof.

Originally, the intention had been to place both defenders and legal aid attorneys in these offices using them, perhaps, interchangeably. However, ABCD's policy of working through existing agencies dictated that these attorneys be on the payroll of the legal aid and defender agencies, who would, in turn, receive grants from us making this possible.

The defenders argued, and with reason, that their attorneys would better station themselves directly in the courts, and should be based, for office purposes, at the defender office downtown. Thus these attorneys were moved out of the neighborhood offices, although encouraged to maintain contact with those offices for purposes of handling referrals when relatives of persons accused of crime apply to neighborhood offices seeking assistance.

Other segments of the program came to be located outside of these multiservice centers and even the study area of the youth opportunities project. The post conviction program, for example, extended throughout the State. Similarly, the participation of schools in the defender program extended throughout the country. And the bail program is to be limited, at the beginning, to the Roxbury District Court site.

The role of the attorneys in the multiservice centers is dictated, in part, by the fact that they are on the payroll of the Boston Legal Aid Society, and will, at the end of the demonstration period, be regular employees of that society. This alone would have discouraged the forming of legal teams of the type employed in other cities. But there were other reasons for using a different approach.

We wanted, for example, to determine whether placing a law office in a social service setting will provide larger numbers of indigents with legal assistance than if the office is not in such a setting. For this reason we placed a fourth neighborhood office in south Boston where it is not in a multiservice center but is on a main thoroughfare resembling in every respect an ordinary law office.

We wanted to determine whether placing a law office in a multiservice center would mean that more persons applying for legal assistance would have other problems handled than would have them handled if they applied to a law office not in such a setting. To put the location situation another way, would the location of a law office in a social service setting discourage persons with legal problems from applying, persons who might object to being considered charity cases?

If the social service setting has advantages, some of these reach beyond the mere location under one roof. Social service caseworkers will be active in the community and could uncover the existence of legal problems and refer them to the legal aid office.

This reaching-out of social services coupled with referral to the law office makes possible a far greater emphasis on preventive legal practice than the normal legal aid operation where the clients walk in the door. In most of the latter cases the clients are already in considerable legal difficulty. It is hoped that the multiservice center will enable the attorneys to provide advance assistance to a person undertaking an installment contract or a loan, or who may be having budgetary problems, or domestic relation problems.

This cannot work, however, unless the social service caseworkers can recognize a current or emerging legal problem. Nor can the legal aid client be assured of the services of the social welfare and employment agencies if the lawyer is unable to recognize problems that are not purely legal.

To make certain that this gap in understanding doesn't exist, all multiservice center workers, including attorneys, are participating in regular preservice and inservice classroom training at the Boston University Law Medicine Research Institute. The institute operates on a grant from the President's Committee on Juvenile Delinquency and Youth Crime intended to promote training courses for teachers and others working in low-income, minority group areas.

This training is also made available to the defender, post conviction, and other personnel so that they, too, can participate in the

referral process. To help insure the smoothness of the referral process, a social welfare referral coodinator will work under the program director to coordinate the various agencies' efforts.

We envision a situation where a man is arrested for a crime; released on personal recognizance provided through the bail program; a defender represents him in court; his wife's medical problems are referred to the multiservice center health unit; her home problems are attacked by a caseworker from the home guidance program at the multiservice center; his oldest son's employment problem is handled by the State employment personnel at the center; his younger son's legal difficulties over a car purchase are referred to the legal aid office in the center; his daughter's school problems are referred to a school adjustment counselor. This is what we mean by the total approach to one family's problems.

In organizing this program we followed a general procedure utilized by ABCD in all of its programs. On the defender side, for example, we are giving a conditional gift to the Massachusetts Defenders Committee, a State agency financed by the legislature and under the supervision of the supreme judicial court. The gift is based on the condition that their portion of the program be carried out as defined in the program design. We will have, at ABCD, a program specialist to make certain that design as well as other parts of the overall legal program design are followed.

The eight defender attorneys and two investigators working in the program will be under the direct supervision of a chief criminal attorney for project purposes, who, in turn, will be answerable in legal matters to the general counsel of the Massachusetts Defenders Committee.

The legal aid side of the program is financed through a contract with the Boston Legal Aid Society, which will provide for placement of two attorneys in the Roxbury office and one each in the South End, Charlestown and south Boston. They will all be under the supervision of a chief civil attorney for the program who will, in turn, be under the supervision of the assistant general counsel of the legal aid Society.

A grant to Boston University will finance their defender project in the Roxbury District Court. A grant to Boston College will finance the bail program, which will be under the general direction of a bail supervisor working under the program director. Grants to Harvard, Suffolk, and Portia law schools will finance student participation in both the neighborhood law offices and the defender program. A separate grant to Harvard will give six students full-time paid employment in the defender program for 10 weeks during the summer months. Finally, a contract with the United Prison Association will finance the post conviction program.

All of these programs will be evaluated for purposes of the youth opportunities project by an ABCD legal research team. The program director and his team, in cooperation with the participating agencies will evaluate other elements of the program.

A particular effort will be made to test standards for determining indigency by using different standards in different locations and determining, through experience and research, whether the persons given service were in fact indigent.

There are two principal sources for financing the program. A grant from the National Defender project of the National Legal Aid and Defender Association will, on a decreasing basis, pay for the defender and Boston University programs. The remainder of the program will be paid for, in large part, by development funds assigned to ABCD by the Ford Foundation.

Since, however, the objective is to enable the program to be self-sustaining after its demonstration period, continuing efforts will be made to build local financing into the project. The Commonwealth will be asked to increase the budget of the Massachusetts Defenders Committee for this purpose, and increased funds from local foundations and the united fund will be sought for other parts of the program.

One major reason for the evaluation is to provide documentation to illustrate the need for continuation of the program and thus its financing.

As in all ABCD efforts it is hoped that the participating agencies will carry forward the program after ABCD steps out. We also hope that this partnership approach will not be abandoned, that the legal services program committee will continue in existence, carrying on this program as it is designed.

In short, we hope the program will have made a permanent change in the way in which legal problems of the poor are treated in the city of Boston.

The New Haven Model

Charles J. Parker
President
Legal Assistance Association

I am going to sketch briefly the history of legal aid in New Haven, then tell you of the impact of redevelopment and human renewal and of the development of our plan for neighborhood law offices.

In the decade of the 1920's, Yale law student members of Phi Delta Phi fraternity, known locally as Corbey Court, furnished legal aid to New Haven's poor in much the same manner as the Harvard Legal Aid Society operates in Cambridge. In 1927 the students, with the help of several friendly members of the local bar, were successful in getting the city to create by ordinance a municipal legal aid bureau. This bureau provides "legal aid and advice in proper civil cases to any person who is financially unable to employ counsel and who is a resident of the city . . . provided the applicant's claim or cause shall be deemed meritorious . . . ," New Haven Municipal Code § 2–17.

However, there was a price. The five lawyer members of the governing commission and the part-time lawyer employed to supervise the students and make court appearances were appointed on the basis of their political activity.

Nonetheless, in recent years, this part-time lawyer and his 40 or so law student clerks have handled about 2,000 civil cases per year. In 1959 this was 13.15 cases per thousand of city population which seems to have been the highest caseload ratio in the Nation. Why New Haven should be in a class with Cincinnati—10.16, Baltimore—10.03, Louisville—9.05, Denver—8.94, or Atlanta—8.65 for that year and subsequent years, is somewhat of a mystery. Unfortunately, the quality of service has not been in a class with that of these other cities.

My impression is that the New Haven bureau has been most frequently used by residents of the inner city slums and housing projects, mostly Negroes, many of whom are fairly recent arrivals from the

South, for superficial relief in legal emergencies such as wage attachment and evictions.

On the criminal side, Connecticut became in 1917 the first State to adopt the public defender system on a statewide basis. Like the prosecutors, the public defenders are part-time officers of the superior court, appointed by the judges of that court sitting en banc at their annual meeting. The public defender handles about 50 percent of the criminal business in the superior court at New Haven. This comes to about 250 cases annually of which about 25 are tried and the remainder disposed of by agreement with the prosecutor.

In the criminal court of first instance (Circuit Court of Connecticut) the practice in the Sixth Circuit at New Haven has been for the clerk to maintain a panel of lawyers from which the judge, when confronted with a poor defendant, may select a special public defender who is paid for his services at the rate of $35 per case. At present, there are 75 names on the list of the panel. However, the judges are not restricted to the panel in their selection of special defenders and they frequently make assignments from the bench to lawyers who are present in the courtroom.

Here I want to make three points about New Haven which may or may not be true about other metropolitan areas:

1. The concept and purpose of legal aid because it was a municipal and law student operation has not received widespread understanding and support among the members of New Haven County Bar Association let alone the leaders of the New Haven community generally.

2. The establishment of the statewide public defender system in the Connecticut Superior Court was assumed to be the last word in the field. The limitations on this system, the inadequacies of ad hoc method of appointing counsel in the inferior courts and the Federal Court, and the lack of defender service in the juvenile court were not recognized by the great majority of the New Haven Bar who do no criminal work, much less by the community at large.

3. In common with the other traditional social agencies, public and private, neither legal aid nor the public defender in New Haven seemed to have any capability of dealing creatively with the problems of the deprived citizens at the core of the city, the multiproblem families, in short, the people described in Michael Harrington's "The Other America." In New Haven, and I suspect elsewhere, legal aid services have been characterized by repetitious work for the same clients such as continuous wage attachment modification, interrupted service, incomplete referrals, repetitious arrest, continual inability to meet bail, repeated incarceration. An illusion of service for these clients has taken the place of constructive social therapy.

So much for legal aid history. Let us look at what urban redevelopment and human renewal has meant for New Haven. The city of New Haven under the leadership of its remarkable mayor, Richard C. Lee, has undertaken the most comprehensive urban rede-

velopment and renewal program in the United States. Redevelopment, rehabilitation, conservation and erection of new community facilities, public and private, are in the process of completion.

The building of 15 new schools is underway. Most of these schools are planned to be "community schools," that is, they will provide decentralized community services and will function as neighborhood centers.

In 1962, the Ford Foundation made a sizable grant to Community Progress, Inc. (New Haven's quasi-public corporate vehicle for human renewal) for a coordinated program aimed at the inner city areas where physical redevelopment is taking place. The initial concerns of Community Progress, Inc. (CPI) have been in the fields of education, employment, housing, leisure time activity, prevention and control of juvenile delinquency, the plight of older people, and the coordination of community health and welfare services.

The goal of CPI is to assure each individual of the opportunity to develop his potential to the fullest, without regard to race, color, social, or economic distinctions. The translation of this goal into a workable context has resulted in the development of two operational premises:

1. That the city must be divided into clearly distinguishable areas or neighborhoods in order most efficiently to isolate the factors which are to be dealt with, and

2. That within these neighborhoods, the institutional means for an integrated and total approach to neighborhood needs will be the community school.

In the CPI prospectus entitled *Opening Opportunities*, the modus operandi is stated as follows:

A comprehensive attack on the social problems of the renewal and middle ground neighborhoods demands the availability of a broad roster of community services. These services must be excellent in quality, sufficient in quantity, and effectively coordinated.

The appropriate place to start is with coordination, developing means for pulling together services at the neighborhood level and using community schools as neighborhood bases. . . .

Later on there appears the charter for our neighborhood lawyer program:

Legal services are a need of many families in these neighborhoods. It is proposed that a plan be worked out, with the cooperation of the New Haven County Bar Association to provide legal assistance at the community schools. Lawyers would look at all legal problems of the family, would provide legal advice and make referrals.

This terse statement by a layman was developed by a lawyer on the CPI staff with the assistance of Professor Joseph Goldstein of the Yale Law School into the following formulation:

Many citizens of New Haven do not receive proper social-legal services for a wide variety of reasons. The low-income citizen may not realize that he has a "legal" problem. He may not realize that he needs professional help with this problem. The low-income citizen may have sufficient income for initial consultation but not for witness fees, court costs, attorney and trial fees, and appeal expenses.

A second reason why the New Haven citizen does not receive proper social-legal services is that the citizen of New Haven may not be able to effectively cooperate with traditional legal services such as Legal Aid and Public Defender. He may not understand the function of these agencies. Psychological and racial factors may cause barriers to effective cooperation between attorney and client. Moreover, traditional legal services do not have sufficient personnel to offer effective services. In addition, these legal services are limited in giving full service at all points in the legal process and before all courts.

A third reason why many New Haven citizens do not receive adequate services is that the public legal services are defined according to traditional legal distinction between civil and criminal cases. Agencies which employ these distinctions often do not meet the family's needs. Common family problems can produce "criminal" breach of the peace and "civil" divorce problems. Effective criminal service depends upon treating problems which may not be formally labelled "criminal."

We propose to meet the social-legal problems of the inner-city families through the Neighborhood Social-Legal Team and the improvement of Public Defender and Legal Aid services. This neighborhood staff, consisting of a neighborhood coordinator (social worker), a lawyer, a neighborhood worker, and a social investigator, is planned in three inner-city areas. The neighborhood services coordinator in the inner-city areas will coordinate a wide variety of public and social services to be made available within the neighborhood. The neighborhood worker will work informally throughout the neighborhood serving as a bridge between service agencies and residents. The neighborhood lawyer will be a member of the neighborhood staff. Therefore, unlike other neighborhood legal programs, the lawyer's activities will be coordinated with a wide variety of community services. An integration between social and legal services is planned. The team's approach to social-legal services differs fundamentally from traditional co-operation between legal and social agencies in that a mechanism for intensive and effective cooperation is made possible by the grouping of lawyers and social workers into a team.

On January 2, 1963, neighborhood lawyers started work for CPI in two of its six human renewal neighborhoods. They were introduced to the neighborhoods as regular staff members of the community service "team" working under the direction of the neighborhood coordinator and given offices in community schools.

Both neighborhood lawyers were recent graduates of the Yale Law School (1961 and 1962) and somewhat familiar with the community. At the start, both lawyers made themselves known to numerous neighborhood groups. They made talks on general legal subjects to several groups in each neighborhood, touching on such subjects as installment sales, landlord-tenant relations, marital problems and the court system.

When prospective clients began to seek the help of the neighborhood lawyers, they were screened for eligibility on the basis of the standards applied by the municipal legal aid bureau. Those able to afford private counsel in the light of these standards were referred through the bar association lawyer referral service to panel attorneys.

One of the neighborhood lawyers was consulted by a woman whose Negro son was charged with rape of a white nurse. At her request, this lawyer agreed to assist the public defender in the preparation and trial of the case. At the trial, the claim of consent was raised by way of defense based on evidence which was rather unsubstantial. This shocked the court and the community.

CPI was very sensitive to this criticism which it thought might indicate the need for professional supervision of the neighborhood lawyers. Accordingly, steps were taken to form a committee of lawyers to advise CPI as to whether the program should be continued and, if so, what modifications should be made in its administration.

In the spring of 1964, this advisory committee, with the approval of CPI, organized New Haven Legal Assistance Association, Inc. under the Connecticut nonstock corporation law and took over the administration of the neighborhood lawyer program from CPI.

Let me now outline the "New Haven Model" with the caveat that its structure and program are very much subject to change as a result of what we are learning at this conference and as a result of the dialogue we are having with the New Haven County Bar Association, some of whose members are highly critical of what we are doing and what we plan to do.

We are a membership organization. At present there is a membership of 32 consisting mostly of lawyers, judges, and social workers invited to become members by the incorporators because of their interest in legal aid. It is expected that many in the community, lawyers and laymen alike, will want to join and pay dues so that the association will have a broad base of support.

The chief role of the membership is to fix the number of, and to elect the board of directors. At present, there are eight directors who provide links with other organizations as follows:

Two are past presidents of New Haven County Bar Association.

Three are members of the Municipal Legal Aid Commission.

One is the Public Defender for New Haven County.

One is on the board of Community Progress, Inc.

One is the Director of the Walter E. Meyer Research Institute of Law.

One is the Director of a private child welfare agency and is active in social work professional societies.

The board of directors performs the usual functions of policy-making and administration. It elects the officers and appoints the executive director. The executive director is presently Frederick Danforth, Jr., who came to us from American University Law School here in Washington where he had been an assistant professor specializing in criminal law.

The executive director administers the neighborhood lawyer program. At present, the program has been suspended at the request of the New Haven County Bar Association, which is considering the charges of some lawyers that the program is unethical or constitutes the unauthorized practice of law. However, it is planned that the program will be resumed and when resumed, there will be three neighberhood lawyers.

Each neighborhood lawyer will serve two of the six CPI inner-city neighborhoods. He will have an office in a community school where he will have a secretary, and the minimum essentials for a one-man general legal aid office. He will share an investigator with the other neighborhood lawyers. He will continue to be a member of the CPI sponsored neighborhood services team but will not longer be responsible to the neighborhood coordinator or formally related to CPI. He will counsel individuals and families referred to him by other members of the neighborhood team with respect to both civil and criminal matters. He will represent some clients in civil and criminal litigation. He will refer others to the municipal legal aid bureau, or to the public defender or seek appointment of a special defender in the circuit court as appropriate.

Each of the other legal aid agenices will receive funds or personnel from our association to improve and strengthen their services and to enable them to work with the neighborhood lawyers. For example, we plan to establish a central criminal law office with an adequate library, with investigative and secretarial services, and with an experienced criminal lawyer for the use of special defenders, appointed by the circuit court, and of our neighborhood lawyers.

The neighborhood lawyer will also:

1. Investigate the basic causes of social-legal problems in his neighborhood. For example, if credit abuses are revealed, these will be analyzed and an attempt will be made to cooperate with merchants and leaders in correcting them.

2. Attempt to prevent social-legal problems. For example, if restrictive racial housing or employment practices involve neighbor-

hood residents, he will represent the victimized residents at the time of purchase or hiring or see to their representation.

3. Educate the residents of his neighborhood in basic legal rights having to do with such things as income tax, leases, conditional sales contracts, arraignment, liquor, commitment, and the use of social services.

The Yale law students who have been so important to legal aid in New Haven will have opportunities for clerkship and clinical training both in the neighborhood law offices and in the central criminal law office. It is also hoped that a limited number of graduate fellowships will be available in both the action side and the research side of the program.

We are presently negotiating for a research director so that we may properly take the raw data which CPI has given us about these neighborhoods, evaluate the kinds of clients we serve and the problems we solve or fail to solve, and tell you whether there is any future in giving legal aid to multiproblem families and individuals as a member of a neighborhood team. We shall try to test the extent to which civil, juvenile, felony, and misdemeanor problems in a given family and in a given neighborhood are interrelated and subject to a coordinated treatment which also takes into account basic social and economic conditions both of the family and of the neighborhood.

Law Governing the Practice of Law by Lay Intermediaries

Zona Fairbanks Hostetler
Washington Attorney

The topic assigned me does require me to be somewhat limited in my comments and to direct them primarily to the lawyers in the audience. However, I am going to spare the rest of you by not dwelling too much on legal technicalities because I prefer at this time to focus instead on some of the practical problems that I think the existing legal rules and canons of professional ethics present for the future of neighborhood legal service programs. Some of these problems have already been alluded to by other speakers.

Let me just generalize at the outset and say that as far as there have been any official legal pronouncements on the subject of legal aid—and there have been surprisingly few—it can be said that corporations rendering legal aid services to the poor are not engaged in the unlawful practice of law, and lawyers employed by corporations rendering legal aid are not guilty of unprofessional conduct. However, I believe the challenge that is going to be posed by these neighborhood legal service projects, if they accomplish all that they have set out to do—and should do—is that they are going to provide truly effective, comprehensive and extensive legal aid service. I am not so sure that we in the organized bar are ready to accept that. Yet, the position that we in the organized bar take will be crucial. As a general rule, cases dealing with the board area of professional conduct have almost always been responsive to the views of the local bar. The real question, therefore, in considering the future course of neighborhood legal service projects is not what the courts have said in the past, but what will be the attitude of the organized bar toward this new concept of legal aid service.

Unfortunately, it seems to me that we in the organized bar have not worked as one, purposefully, boldly, and imaginatively toward the

ideal of adequate and effective legal aid for all those in need thereof. Those participating in legal aid activities or who serve on legal aid committees of the national and local bars have been unstinting in their efforts, but there appears to have been inadequate coordination with those members of the bar concerned with professional ethics and unauthorized practice.

It might be said, moreover, that with three or four exceptions in the larger metropolitan areas, legal aid has been more or less tolerated in communities so long as it hasn't done too much. In most cities legal aid consists of one paid person. Frequently he is just part-time. The salary in any case is almost always woefully inadequate. In some cities services are augmented by volunteer help. The result, of course, is that a limited staff can handle only a limited number of cases and can devote only a minimum amount of attention to those handled.

Through the years this struggling legal aid activity has at least been permitted to exist with a minimum of opposition. When the legal aid activity has become too competitive, however, I am sorry to say that the opposition has increased. Such opposition can often be very intense and very effective. I won't try to go into the politics of establishing adequate legal aid facilities. Others who are in the thick of the fight, like Mr. Parker, have already mentioned the problem and can give you more of the bloody details. I will note only one instance where the opposition reached the point of a legal proceeding. This is the much publicized Azarello case in Ohio. There the legal aid society giving civil legal aid assistance to needy persons had existed for some years when it decided to open a legal defender's office and to accept court appointments for the defense of the criminally accused. The court fees for such representation which theretofore had gone to individual lawyers in the community were given to the legal defender's lawyers, who in turn gave the funds to the legal aid organization.

Subsequently a court suit was brought alleging that the legal aid organization was engaged in the unauthorized practice of law. To their great credit, the bar associations filed amicus briefs supporting the office, and the court upheld the right of charitable corporations to render legal aid to the poor.

In its opinion, the Ohio Court of Appeals cited as authority for its decision one of the bar association's canons of professional ethics—Canon no. 35 dealing with lay intermediaries. Canon 35 provides that a lawyer should not practice law while in the employ of a lay agency (called an intermediary), personal or corporate, because such employment may intervene between him and the client, control his services, or direct the performance of his duties. The Canon states that the lawyer's responsibility should be directly to the client. Then, in a single sentence, the Canon provides simply that "charitable societies rendering aid to the indigents are not deemed such intermediaries."

This Canon, I believe, raises two questions. The first one is the difficult one of who is an indigent, and how is that determined? What should be the criteria? Needless to say, views vary widely, and there are some members of the bar who feel very strongly that no one from whom a fee can possibly be obtained in some manner should be deemed an "indigent." Unfortunately, legal aid offices have often been extremely sensitive—too sensitive I think—to the critical elements in the legal community, and thus have bent over backwards in applying eligibility standards not to give support to their opponents' suspicion that the offices are taking away their business. Here it is not so often the absolutely destitute, but rather the fringe groups of the near poor that have suffered most from this approach. It is submitted that the balance should be struck somewhat differently—that it is far better to have criteria which allow aid to someone who might in fact be able to pay a fee rather than criteria which result in turning away others who, under any realistic formula, cannot afford a lawyer in the open market. Moreover, a legal aid corporation should not have to strike this balance at its peril with fear of reprisals under unauthorized practice of law rules. Rather, the bar should give legal aid organizations broad discretion in the matter, and there should be a strong presumption that they have acted correctly.

Ultimately, of course, there is the question of whether the legal needs not only of the destitute, but of the near poor, and even of the moderate income groups, should be met only through a system of general competition among lawyers, particularly when those needs are in basic health, family, and welfare areas; and if not, what are the alternatives? Thus far, bar committees on unauthorized practice and legal ethics have not given serious consideration to this question.

The bar as a whole has vigorously opposed any proposals for group legal services to persons not clearly indigent. This posture of the bar has recently been called into question by the Supreme Court in the Brotherhood of Railroad Workers v. Virginia case holding that a labor union might properly act as an intermediary between a union member and a private practitioner. The court went even further in hinting that it might be proper for the union to employ lawyers to represent union members.

Professor Cheatham of Columbia University, who wrote the excellent book, "A Lawyer When Needed," has suggested, in an interview with the National Legal Aid and Defenders Association's "Brief Case," that the present Supreme Court majority has grown "impatient" with too narrow restrictions by the organized bar. He suggests that group legal plans may well be the trend of the future and that now is the time for the bar to reexamine its position of opposition and initiate rules for the wise regulation of such services to protect the public from any abuses. However, at this point, the full im-

plications of the Railroad decision, including the response of the bar, are unclear. As Mr. Allison stated, the seismographic needle is still jumping.

A second interesting question raised by Canon 35 is that while it condemns legal practice through intermediaries as interfering with the lawyer-client relationship, it simply excepts charitable organizations rendering aid to the indigent by saying, in effect, they're not the kind of intermediary we're talking about. It would appear that little thought has been given to the possibility of control or conflict where the organization is nonprofit.

In another landmark case, the recent NAACP v. Button decision, the Supreme Court allowed the NAACP to employ lawyers to represent Negroes in discrimination suits. The majority commented that where no monetary stakes are involved there is no danger that the attorney will desert or subvert the interests of the client to enrich himself or an outside sponsor. However, as Justice Harlan's dissent suggested, there are other more subtle forms of control and intervention that can exist even where the employing corporation is well motivated. Thus, Justice Harlan suggested that while it might be in the interest of the NAACP to make a frontal attack on segregation, instituting litigation, and pressing for victory on major points, an individual client might best be served by negotiating or compromising his particular claim, a compromise which, though preferable from his individual viewpoint, would not be consonant with the desires of the organization. A neighborhood legal aid agency lawyer might be pressured not to sue the city welfare department on his client's behalf for the sake of maintaining good relations, or as Mr. Parker suggested, might water down the defense of a controversial rape case. For an expansion of this theme, I recommend, as others have, that you read the excellent Yale Law Journal article by Edgar and Jean Cahn.[12]

The fact that there is a possibility for divided allegiance, even where there is no profit motive does not, of course, mean that nonprofit legal aid organizations should not exist. It simply means that the possibility of conflict must be frankly faced and means devised of adequately handling it so that the client's interests are always preserved.

The majority opinion in the Button case, incidentally, agreed, as did the Ohio Court in the Azarello decision, that any control over the legal aid lawyer's tactics, counsel, and duties towards his client would be subject to judicial rebuke. The courts in those cases simply found no evidence of such control in the facts at bar.

In addition to the question of unlawful practice of law by virtue of employment through a lay intermediary, other conflicts with existing canons of professional ethics may arise from time to time.

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[12] Cahn, The War on Poverty: A Civilian Perspective, 73 Yale L. J. 1317 (1964).

What effect, for example, will the barratry rules regarding solicitation of business and stirring up of litigation have on the proposed activities of the legal service projects?

Again, existing legal aid societies, somewhat cowed by the barratry rules, have been timid in inviting the poor to partake of their legal aid fare. Thus they have waited for clients to come to them—clients who (1) know they need a lawyer; (2) know that there is a legal aid; (3) can overcome their fear, ignorance or distrust of lawyers and the law; and (4) have the carfare, shoes, or baby sitting help to get there. Obviously, as others throughout this conference have told most eloquently, many of the poor most desparately in need of help are never served.

It's all well and good to print pamphlets about "When you Need a Lawyer," or "When to Draw Your Will," and to distribute them in banks, libraries, and dentist offices (which practice is allowed under existing rules). The only problem, of course, is that many of the potential clients of the neighborhood legal service programs don't go to banks, or libraries, or dentist offices. Even if you were to put the literature in grocery bags, you would find that most of the shoppers would still fail to get the message. In the recent Studebaker plant shutdown in South Bend, Ind., the U.S. Employment Service did in fact slip brochures about employment retraining programs into grocery shopping bags. To its dismay, the response was insignificant. What was needed, it turned out, was a door-to-door canvass explaining the program to the workers—and these were literate, skilled working people.

However, any kind of aggressive neighborhood activity has thus far been eschewed by the traditional legal aid offices for fear of condemnation under the long-standing rules governing improper solicitation of legal business. Indeed, even the most bland types of advertising have often been avoided. Here in the District of Columbia, for example, you would hardly know there was a legal aid office. If you look in the yellow pages of the telephone directory under "Lawyers," you won't find any reference to it. If you look in the white pages—and you're clever enough to look under "Legal" and not "Lawyer" you'll find in the smallest type possible, the words "Legal Aid Society."

In contrast, the lawyers referral system, which charges a fee for services, appears in the telephone directory in both the yellow and the white pages, and in fact has an advertising box (the only one in the lawyer section) proclaiming in large black type: "Lawyers Referral Service—Referral if you have no lawyer."

To do its job properly, I believe lawyers must get the message to the lowest echelons in our society that law and justice is for them too. The solicitation and advertising rules need to be reexamined in

light of this responsibility. The Supreme Court's NAACP v. Button decision has pointed the way for new thought in this area. In that case, the Court held not unlawful the practice of the association's employed lawyers going out to neighborhood meetings, urging Negroes to institute school desegregation suits, offering to represent them in such suits, and handing out contract forms. The Court did not, however, set forth any definitive guidelines for when such solicitation practices would be allowable. In the case before it, the Court found the solicitation efforts in the "public interest" of vindicating the constitutional rights of Negroes. It is not so clear what other kinds of cases—rent strikes, for example—will be in the public interest. If I were to venture a guess, however, in light of the recent trend, I would say that at least there is a public interest in vindicating any and all legal claims of any minority, whether it be a racial minority or an economic minority.

The Supreme Court, since the ascendancy of the present liberal majority, has broken precedent in the past 2 years with the tradition of leaving the regulation of professional conduct to the States. The Court seems to be setting the pace for revised thinking about the ways and means of giving legal help to the poor, the unfortunate, the discriminated, and to the just plain folk of modest means, in order to fulfill our long-cherished concept that equal justice means a lawyer for everyone at a price he can truly afford, and at no price if he can afford none. The challenge is now facing us as members of the bar. And it is not enough that we legal aid lawyers come to conferences and talk to each other about the problem. We have to go to every lawyer we know, grab him by the collar, and say, "Look, I want to tell you about the problems of the poor, and I want to tell you what you can do about it at the next bar association meeting." Others here at this conference will be talking about other things that we as lawyers, as law professors, as social workers, and as citizens, can do to help.

As far as the organized bar is concerned, there is a need for new and creative examination of the canons of professional ethics so far as they relate to legal aid activity. Fortunately, the opportunity is at hand, for this summer the American Bar Association authorized the first revision of the canons since they were enacted more than half a century ago.

Most importantly, rather than resting with a negative statement that corporations rendering legal aid to the poor are not engaged in unlawful practice, the extension of legal services to those in need of them should be pronounced as an affirmative duty, a duty which belongs not only to the profession as a whole, but to each of us as individual lawyers.

SUMMARY OF DISCUSSION

New Legal Services for Economically Depressed Metropolitan Areas: The Neighborhood House Concept— Organization and Administration

In the discussion of the papers presented at this panel, it was noted that a growing interest in legal affairs on the part of "lay organizations" has been evident in recent years. In addition to the present Conference, there has been a conference on adoption sponsored by a social agency, a conference on correction sponsored by political and social agencies, and a bail conference sponsored by a private foundation. It was suggested that this reflected a failure on the part of the bar to keep abreast of the increasing needs of poor people, and that the various lay agencies now active in this field were filling a vacuum formed by this failure of the bar.

That there are gaps in services to poor people all over the country has long been a thesis of legal aid lawyers, but the legal profession as a whole must be made aware of both new and old needs of the poor and must take some affirmative and imaginative action if it wishes to continue its role as a leader in legal matters. It was further suggested that conferences of the present sort presage a revolution in the practice of law, at least insofar as that practice is carried on as a gratuity for society's lowest income groups.

In this connection, several conference participants expressed the belief that existing legal aid organizations should provide the basic framework for new or increased legal services through various community action programs. In response, the point was made that it is in the interest of everyone concerned with the problems of the poor to seek the development of additional legal assistance through experiments with a variety of means and sources for such assistance. Beyond this a participant suggested that the bar could do much more

than it is presently doing toward reform of substantive law as it affects the poor, and that every bar association might profitably have a committee on law and the poor which would look to the reform of both substantive and procedural law.

Although there was general agreement with the idea of experimenting with new forms of service to the poor, a number of concerns were expressed:

The Need to Involve the Poor

There is the real problem of the resistance of the poor to any service program for them, no matter how good and well designed by professionals. Significantly, it was noted that no representative of the poor was present at the conference. There is too much of providing services *for* them, doing things *to* them, instead of *with* them, and not enough aimed at developing their own decision-making ability. Nevertheless, one of the significant effects of providing meaningful legal services to the poor is the impact it can have on their feelings of "powerlessness." The poor learn, often for the first time, that the legal system can be an ally. Their involvement needs to be achieved sensitively, starting on a case by case basis, and moving into consultation with groups. The physical location of the legal service, and its tie-in with other services to the poor enhances the possibility of involvement.

The Nature of the Attorney-Client Relationship

The "time honored" relationship of a client voluntarily seeking help from a lawyer or in a legal aid office is changing significantly. The lawyer may now be part of a complex of social services in a neighborhood service center or a settlement house. He may be consulting with groups of poor people around the legal dimensions of their consumer, housing, public assistance, etc., problems. He may be directly intervening at the police station. His behavior may be characterized by a more aggressive seeking of cases (referred to as "paternalism" by a panelist) which affect the rights of poor people. There are professional issues involved in these close working relationships with other professionals, some of which may affect his freedom to adequately serve his client, and the solicitation of cases.

The Problem of Private Practice

Two sides of this problem were suggested: (1) that lawyers in private practice fear the loss of potential clients to organizations which are subsidized from private or public funds; and (2) to the extent that the ideal of prevention is realized as an outcome of the new services, inroads will be made into private practice. One participant felt that the group being reached represented a market largely untapped by the present organization of services; another urged that lawyer referral services do more to reach those who can make some payment for legal assistance. One participant felt that legal aid was

of sufficient importance for the government to make provisions to supplement public welfare assistance to the needy by including payments for this purpose. This would enable the recipient to choose and pay his own lawyer.

Reaction from the Community

There was agreement that careful planning and the involvement of relevant groups such as the bar association, the Legal Aid Society, and others was basic to the acceptance of the new legal service unit. Nevertheless, one participant argued, not everything can be provided for in advance, and if it is, the unit will never get off the ground.

You can work things out theoretically, but when the groups are faced with the actual fact that there are attorneys there representing people in a way that they have not been represented before then the pressure groups will respond. . . . It is all very fine and dandy until actually one gets down and one is in court representing tenants, and then suddenly the real estate interests discover that on a mass scale tenants who up to now have been passively accepting what the landlords were doing to them were rejecting it, were fighting back, were going to court demanding their rights. And at this point, of course, the pressures start.

A related problem noted by a participant was that it is one thing to provide assistance to a poor person in his relations with a public agency which has legal resources, and another in his controversy with another individual who does not, and must pay for his own lawyer. The English may provide a model since they have recently adopted a limited system of subsidizing both sides in certain types of cases.

Legal Aid Society v. Experimental Legal Service Units

A degree of controversy between spokesmen of the Legal Aid Society and representatives of the new legal service units occurred. Although "lawyers don't bruise easily," there was evidence of some sensitivity as real differences in points of view emerged. The nub of the controversy was eloquently put by a representative of a legal aid society:

Why is it necessary in a place like New York where they have a legal aid bureau that is almost a hundred years old with a competent staff that is trained and educated and experienced in the problems that legal aid is familiar with—why is it necessary when other projects are commenced in which legal aid problems are part of the program—why is it necessary to go outside of legal aid and organize separate groups of lawyers to handle these problems when there is an agency existing for that purpose?

We all know that one of the major problems of legal aid, wherever it may be, is the lack of funds, and sometimes it is difficult to do everything that we legal aid lawyers think we have to do because we can't get the money. Now if these other agencies have the peculiar ability to raise the money that we can't raise why don't they join with

us and ask us to do the job that we have had the experience, the training, the interest and the knowledge for lo, these many years?

The response made by staff members of the New York City agency denied the duplication of services. The following points were made:

1. The Mobilization for Youth legal services unit believes in an "expanding neighborhood concept" which includes placing legal clinics in settlement houses, working with tenants and other neighborhood groups in their locality. Something new is added to programs when lawyers are available to consult with social workers and clients.

2. The work with administrative agencies which affect the lives of the poor in a crucial way goes beyond counseling the client and dealing with the welfare workers on the departmental level. There is the additional focus on "law to be developed" towards which legal intervention has been geared.

3. A different and "bottom group" of people has been reached. The Legal Aid Society's values of centralization, efficiency, and separateness in operation from social services preclude it from reaching those who need help. Legal Aid lawyers have become good technicians, while the new, comprehensive, community action structures require generalists who can work with community groups, labor, business, etc.

4. There is a parallel here with the soul searching going on in social agencies and the public schools, where social workers and teachers are realizing that their traditional approaches and techniques for the delivery of services is not doing the job for those most in need. The MFY legal services unit would like to help the Legal Aid Society take over the mode of operation, service delivery, as well as the MFY objective of developing and changing law and administrative practice which affect the poor.

5. Experimentation in the social area frequently requires a new organization because of hostile attitudes and rigidities in established services.

Both groups agreed that cooperation, and not rivalry, was needed in carrying out the important activities in which both are engaged.

Evaluation

The experimental nature of the new legal service units led to the question of identifying criteria for evaluating their effectiveness and determining when prevention has occurred. The respondent noted that control groups have not been established and in the nature of the case may not be warranted. The evidence they expect to show is of (1) new services provided which had been unavailable; (2) the actual representation of those previously unrepresented; (3) the development of new legal remedies; and (4) changed patterns of behavior and service by the police department, department of public welfare, and other significant organizations.

A number of times during the discussion participants and panelists commented that there had been "shamefully little experience" developed in providing legal services to the poor. There is little question but that lawyers attending to these problems are not "prestigious" as are their counterparts in corporate law practice. Analogous to corporate legal practice, law may be seen as a significant tool to legitimize the claims of the poor for a place in society from which they have been excluded. Ultimately lawyers can only be technicians in advancing the human elements of the law; in the last analysis all citizens can be advocates and can assist the poor to become advocates on their own behalf.

PANEL III

Forewarning The Low-Income Community of The Most Common Legal Difficulties: Educational Method

Dean Clyde C. Ferguson
Howard University Law School

INTRODUCTION (Transcribed Remarks)

As moderator, let me assure you, first of all, that I shall engage in moderation and attempt to set the context for the panel discussion this evening, which, as you see from the program is "Forewarning the Low-Income Community of the Most Common Legal Difficulties: Educational Method." I assume that our subject refers to the rather critical problem of the unit of service which is to be afforded to the low-income community. Perhaps it is not sufficient to treat the "services to the poor," as we have characterized it, as simply a problem of taking the case-by-case presentation that comes into a particular aid-giving office. There are obligations which exceed simply providing what might be described as emergency legal aid for those who cannot otherwise afford any legal assistance.

I would suggest that, in considering the context in which we discuss the problem of forewarning the low-income community, we consider the new dimensions of problems of the newly visible poor and the effect that their self-perception of these problems might have on the nature of services which are to be afforded. I would suggest, for example, in dealing with this low-income community that we are not concerned solely with the problems of economic deprivation as we might well have been 20 or 30 years ago. For all substantial purposes, perhaps what we are concerned with is the fact that we identify the recipient of whatever the service is on an economic basis. Too often,

however, the economic deprivation is simply the hallmark of another kind of deprivation, principally, in education, in the potential that the poor have for service or for receipt of service in the community. And perhaps, most importantly, this deprivation is marked by deprivation in spirit and in hope.

Consequently, when we talk about the poor nowadays, we are talking about something substantially different from the poor who may not have sufficient economic resources to afford, in our present structure, the usual kind of legal services. I would suggest that maybe, in our discussions, we have in mind that the poverty we are talking about is a poverty, not only of economic resources, but a poverty of the personal resources which affect and which in many cases may be root causes of the kinds of services which must be afforded.

Secondly, I would suggest that there is a dimension to the problem to which some discussion was directed at our last session, and that is the extent to which this particular new donee community conceives its own role in the process of affording a way out of the state of poverty. Consequently, I want to register something of a caveat that what we do by way of suggestion of programs and the like must include the self-perception of the poor and their relationship to the total community.

Now, I think there may be a series of questions which we might all keep in mind in the course of discussion and which would provide something of a focus in dealing with the particular problem we have before us.

The first, and it seems to me the critical question, is who is to render the kind of forewarning educational service which is contemplated and implied by the title of our program? Is this to be restricted to the professional? May this task be given as a function to others who are not professionals? To what extent may we look to other kinds of qualifications of those who are to serve (bearing in mind, of course, the whole topic that was opened in this afternoon's panel of whether or not the bar as now organized, permits resort to the nonprofessional kind of servicing for this particular community)?

Another question which might occur to us is when are these particular services to be rendered? Are we going to perform them in the context of a particular emergency or a particular problem that occurs to the client or is the timing of the services to be gauged by the one who gives the services?

The answer to this particular question may very well bear on the receptivity of those to whom the service is offered; will they receive it and if they do, will the services be effective?

Another question is what is the kind of forewarning that is to be given? There are a number of quite obvious areas in which there is a demonstrable and perceptible need. Mention has already been

made today of the problem of consumer advice and the whole relationship of the poor community to the credit structure. But this is simply the most obvious. There are many other related aspects which may not so clearly appear to be appropriate subjects of a forewarning service.

What, for example, is to be done about the relationship of the poor, not only to the credit economy but also to the political economy? What kind of advice is to be given in terms of more effective use of the resources of citizenship—does not this raise problems in becoming involved in political controversy or utilizing the political structure to effect changes for the poor?

There are even more problems beyond just the political structure. As we know, or as some suspect, there may very well be different value systems involved. What is to be done about attempting to advise within a particular value system which may reflect different cultural heritages or religious views and the like? Are those to be the proper subject matters of the kind of forewarning that is implied and is conceived by the title of our panel?

Then, there are some even more subtle problems involved in forewarning. One relates to the psychic dimension which is sort of a summation of all of the other prior questions—that is, what part of the community is the important part? Is it the part of the community that the donee client already identifies as the enemy—those who are maintaining the very system which has given rise to the problems that lead to alienation and rejection?

These are all quite difficult problems which affect the total subject of our discussion tonight, of "forewarning the low-income community about their most common legal problems."

I would suggest there is the overriding question which involves all the discussions that we have had, and that is: what are we forewarning for? Is it simply to make acceptable a total adjustment to the system as it is now or do we have something else in mind when we forewarn this new community with which we are so greatly concerned?

I would suggest that these questions to which, obviously, none of us has complete and total answers, may very well serve as a focusing device for the remarks we are now going to hear.

The Harlem Experience

James N. Finney
Director
Neighborhood Legal Services Project

The project was designed to demonstrate to responsible individuals, organizations, and institutions, the kinds of legal needs which can and do arise in any neighborhood of any ghetto, and to understand, develop and apply means for meeting those needs. Our prospectus outlines all of the activities and programs with which the project is expected to be involved and its broad objectives. Copies of the prospectus are available for any who would care to read it. My remarks this evening will be confined to a brief methodological report of our activities in community education, both last summer and during the current school year.

There are two types of educational programs which we have tried to implement. The first might be called preventive, such as the work we did this past summer on the law of arrest. In this type of program the community is advised of individual rights, privileges, and duties, in an area of the law where, even if the specific need does not arise, it is still valuable information to have. The same might be said with regard to consumer frauds, an area in which we plan to become involved in the near future.

The second type of program has a more functional purpose, and it involves providing members of the community with legal information with which they will be expected and urged to help themselves correct existing problems in a given area. This is the kind of program we expect to be involved with this winter in the field of housing.

A general problem to be dealt with in understanding any sort of community education program stems from the fact that a good many people usually are unwilling to inform themselves until there is a serious, immediate, and specific problem. A number of reasons have been advanced to explain this widely accepted observation, in-

cluding apathy, inertia, or the daily struggle to survive. In Harlem this past summer we found in addition to any other explanations, a widespread attitude of cynicism about the law, the fairness of its administration, and its efficiency. But we question whether the attitude is typical of indigent white communities. In Harlem it is related to the Negro struggle, impatience with the progress of that struggle, and with the pace of that progress. We have, therefore, to overcome an impatience for immediate and substantial solutions.

We have tried to overcome these and other difficulties in several ways. One method has to do with the selecting of topics. Effort has and is being made to select those topics in which a better than average interest was found in the community. We have discussed this matter with many and various community organizations and groups, including block and tenant associations, church and political groups, and professional clubs.

A related element of our educational program which we believed helped us achieve results, was that of timing. The law of arrest seemed an especially likely topic of interest during the summer, because during that time of the year there is greater contact and tension between the police and residents of a ghetto like Harlem. Similarly, we expect reasonable success with our housing program this winter, because of New York's experience in past winters.

After the law of arrest was selected as a topic for community education, we decided that the information was important enough to be printed in the form of a pamphlet. Now, there is an endless number of very useful pamphlets printed each year. The pity is that relatively few of them are ever read, or, if read, understood by the intended recipients. We have tried to avoid this eventuality in two ways. Before having the pamphlet printed, we held about four meetings with small groups of people to test the clarity of the information to be used. From these sessions we received valuable suggestions, many of which were incorporated into the final draft.

Our success in planning and organizing those small meetings gave us the idea of organizing larger meetings to be held in conjunction with the distribution of the pamphlet. We were able to hold five such meetings before the end of the summer, which attracted several hundred people. As with topic selection, we worked with various community groups and organizations in planning and carrying out these meetings. In form they were, quite simply, exposition, followed by a question and answer period.

Thus far it would be very difficult to evaluate the substantive effect of our program, though we were encouraged by the attendance at our meetings and by the generally lively discussion which ended each one. Our work in housing should provide a better indicator, because, as was mentioned earlier, the purpose of this kind of program

will be to stimulate members of the community to action in their own behalf. This activist element compels us to keep certain practical drawbacks in mind. In terms of results which people will expect, it must be remembered that often a great deal of time must be invested, for example, in filing a complaint and obtaining a hearing, before results, if any, are forthcoming. This becomes of critical significance in undertaking to encourage self-help solutions to members of a community such as Harlem. In such communities there are to be overcome, not only general problems of human apathy, but this attitude buttressed by and interrelated with the frustration, hopelessness, and suspicion stemming from being both poor and black. Where there is not openly hostile cynicism, there is at least an unexpressed conviction that nothing substantial can or will be accomplished by law, or any other means. And anything short of a substantial solution is often ignored or held in contempt.

As law students, we have had to keep in mind that the legal solutions we are suggesting will not supply substantial results, and that the chief characteristic of our legal process is the deliberateness with which it moves. But we also have to remember that something is better than nothing. As a result, we face the far from simple task of countering the distorted view of the law and its administration without stimulating unrealistic expectations. In this endeavor, as with running the project itself, we have constantly sought the guidance and support of responsible individuals and organizations, both within and without the community.

Within the community, we have as yet been unable to obtain support from some important quarters, most notably, the lawyers who live or work there. But there are new organizations and new leaders emerging, and some of our strongest support has come from them. Working together we have found that it is possible to arouse people to action, in spite of the obstacles, and we had many encouraging experiences this summer to prove it. From those experiences, we have tried, in meetings with other community organizations, to analyze the encouraging response we have had, and have tried to draw some conclusions.

We have come up with the following partial answer. Those people who have responded to our efforts have not done so because we have convinced them, as yet, to have faith in the system. Rather, by working in the community day after day, we have convinced them of our sincere faith in the system. This is why we are certain that pamphlets alone would be inadequate, and, perhaps, best defines the necessity for a project such as ours, as well as the responsibility it must be prepared to assume.

The English System of Citizens Advice Bureaus

Mildred Zucker
Executive Director
James Weldon Johnson Community Center

Nothing I have read, heard, or seen during my 7-month study of social work programs in England intrigued me more than the Citizens Advice Bureaus (CAB's). This objective, friendly, and well-informed advisory and information service to the ordinary citizen was established in England in 1938 by the National Council of Social Service. Its value as a constant source of help to the citizen and information to the Government in normal as well as critical times, and as an indicator of dangerous trends or pressing needs in communities, has been affirmed and reaffirmed over the past 25 years of its existence. I see it as a service easily transferable and urgently needed in America as we face increasing specialization of services, greater complexity of government and commerce, and new programs such as the war on poverty.

Speaking at the 1962 annual conference of CAB's, Dr. Waddilove put it this way, "Protection of the individual is the heart of the matter in present day society." Sir George Haines, the national chairman, said, "CAB's are a new style method to meet a new style world—in which people are faced with a scale of events and new powers that dwarf them—and a pressure of change that changes the very mode of their lives. A world in which impersonal forces operate—over which they have no control—a vast complex of communal regulations that impinge on their very lives—technical changes beyond anything they ever dreamed of. It would be less difficult if ours was a planned society, but that is not what we want. Hence, we must give strength to the private individual even as we give the State a larger share of responsibility."

History

The British National Council of Social Service created the CAB's in 1938 in anticipation of the critical emergencies and disruption of family life that would arise if there were a second world war. Many seasoned social workers in England recollected World War I and the insuperable difficulties faced by citizens which might have been eased had the social agencies been properly prepared. They were determined not to be caught unprepared this time. Thus, on the very day that war broke out, on September 3, 1939, 200 CAB offices opened throughout England. Manned by social workers and volunteers and financed by the Ministry of Health, they were located in settlement houses, family casework agencies, churches, stores, libraries, town halls, bomb shelters; wherever space was available. Many offices moved two or three times as they were bombed out. As the war continued their number increased until 1943 when over 1,000 offices had been opened, responding to some 10 million queries during that year. Today the 452 offices operating throughout England, Scotland, and Wales answer over 1 million inquiries. As a result of an experiment financed by the Carnegie Foundation, mobile CAB's now serve several small towns or rural areas, spending 1 day a week in each. The general proportion of paid staff to volunteers is about 3 to 7. Approximately 2,500 volunteers each contribute from a half-day to 3 days per week. In London, however, where the Family Welfare Association, the major casework agency, supervises the 17 CAB branches, the percentage of professionals is considerably higher.

During the war citizens sought help in tracing missing relatives, arranging for evacuation of children, writing letters to prisoners of war, checking casualty lists, finding homes for those who had been bombed out, etc. But even during the early period of the war, CAB's handled problems that were not specifically war connected—questions on where to go and whom to see about problems of housing, personal and family difficulties, marriage conflicts, indebtedness, and a variety of concerns of the aged.

Because CAB's were a wartime essential financed by Government, though run by voluntary bodies, there was the fullest participation and cooperation by every kind of social service agency, the legal profession, Government officials and administrators, educational and religious institutions. Referrals moved both to and from these groups and CAB's, with the result that their staffs became the most knowledgeable source of information and advice, not only for the citizen but for the various citizen-serving bodies as well.

In her report at the end of the year 1939 the worker in Southwark, London, wrote that referral information or assistance had been sought from every conceivable agency: Public Assistance Bureau, the Labor Exchange, Medical Office of Health, local education authority,

Ministry of Pensions, district health nurses, churches, doctors, Children's Aid Association, blind welfare, police, housing authority, Artists Benevolent Association, and many others. With the war's end it was inconceivable that this body, with its accumulation of experience and know-how, should fold up its many tents and disappear. In 1948 through an Act of Parliament local authorities were permitted to give financial and other support to local CAB's.

Modern Purpose

The year 1948 was also the year of the enactment of major social welfare legislation, in England commonly known as the Beveridge Plan. Universal Children's Allowances, the National Health Service, National Public Assistance, major public housing programs and many other social reforms were initiated. While Lord Beveridge was among the first to see the need, he also recognized the dangers inherent in this comprehensive welfare program deposited in the hands of Government. He therefore saw CAB's as essential not only to advise the general public how best to use these vast new services but also:

1. To explain the workings of public authority to the citizen. For as the citizen comes to understand public authority, he comes to regard it as something not alien and hostile to himself but something for which he may become responsible;

2. To help protect the citizen against the public authority when the latter, through mistake or stupidity, is acting wrongly; and

3. To make the world appear, to many citizens in distress, to contain some element of reason and friendship. They are able to do this better because they are neither the dispensers of material assistance nor the makers and administrators of the law.

To do this most effectively, CAB's, he believed, may be financed by the public authority but like universities, they must be free and independent.

Defined from a different perspective and more broadly at a Conference of the Royal College of Nursing on Mental Health and the Community, the CAB's purpose is "to make available to the individual accurate information and skilled advice on many of the personal problems that arise in daily life; to explain legislation, to help the citizen benefit from and to use wisely the services provided for him by the state, and, in general, to provide counsel to men and women." CAB's have thus moved from an emergency general service in time of crisis to an everyman's advisor in so-called normal times, serving at the same time in the role of protector of the rights of citizens.

As I read records at the Ladbroke Grove CAB, I was impressed with the range of problems dealt with. For example there was: (1) The elderly landlord whose only income was from his two-family house was refused permission by the town hall clerk to open the base-

ment of his premises for a poodle parlor. The CAB worker helped him to find the necessary documents, drawn up in 1938, to prove that the premises had been used for business at one time prior to his purchase of the property. CAB then advised the landlord to apply to the county clerk's office and permission was granted on the basis of the prior use. (2) A couple wanting to separate but trying to avoid taking their child through court proceedings, was referred to a marriage counselor. (3) A retired nurse requesting part-time work was given the names and addresses of places to go.

The majority of cases were of tenants having to move or feeling that some injustice was done by a landlord. There were also a number of cases of landlords owning one-family homes who needed help, not knowing what to do under the new housing acts. Eventually the national office drew up two pamphlets "On Buying a House" and "On Renting a House for Tenants and Landlords," based on the flow of questions they received day in and day out. They produced a good part of the material that led to the passage of the Rent Act in 1958. In the first 6 weeks following passage of the new law they reported on 55,000 inquiries pertaining to it.

According to Mrs. Audrey Harvey, critic and writer on social welfare issues in England and CAB volunteer, these Bureaus are the only social service where workers are trained to understand where and how the public may seek redress in the law. In relation to the social work profession she feels that CAB's act as a siphon through which the majority of social problems pass, thus saving the time and resources of the casework agencies who provide more intensive long-term care to the minority who need it most. This is even more true of the role of the CAB's in relation to the legal profession.

From their very inception CAB's sought the aid and advice of solicitors and barristers on every level of operation. Outstanding lawyers served on national and local advisory committees, gave free legal advice at CAB offices in the evening; were available by telephone during the day; and if they were retired, often volunteered their time at the Bureaus during the day. With the advent of the Beveridge program and its complex of new services often requiring legal interpretations, the relationship between CAB's and the legal profession grew stronger as did their respect for each other's areas of competence. The legal profession found that CAB's were informing the public about how, when, and where to make use of the lawyer as no other group had ever done. Since lawyers cannot advertise, this was an important service both to the public and the legal profession. It led, in time, to the passage of the Legal Aid and Advice Act, which I shall discuss a little later on.

According to L. Farrer-Brown, J.P., Chairman of the National Citizens Advice Bureaus Committee, "Bureaus stand or fall on their own feet." He sees them as independent, local bodies brought together periodically through a central organization. Their strength lies in the link they provide between people and the agencies around them. At the 25th anniversary conference he said, "I couldn't care less how differently you each do your job, so long as you are helping people. The fewer the rules governing you, both individually and collectively, the better." He goes on to say that CAB's have a priceless power—the freedom to ask and to act to a far greater extent than any statutory body, and therefore they must be willing to include representatives of these statutory bodies in various ways if they want to continue to receive their full cooperation.

To emphasize the validity of the neighborhood setup he told the story of the middle-class teacher who called on a boy in a school of poor children and asked, "If you put your hand in your pocket and took out 10 shillings, 15 pence, and 5 half crowns, what would you have?" Came the reply, "Somebody else's trousers."

My own experience confirmed this kind of understanding on the local level. At the Southwark CAB the worker told me that though she had been with the CAB's for 15 years before coming there, it took her months to understand the use of the King's English by the working class in this particular neighborhood. She slowly realized that when someone said, "I haven't got much of a headpiece" or "I broke my glasses" or "I'm not much of a scholar" they really meant "I can't read, or write a letter—won't you do it for me?"

CAB's are developed on a local basis sometimes spontaneously out of community awareness of the need; and sometimes by field consultants. The process usually starts with a number of individual or small group gatherings, these are followed by a large public meeting. If there is enough interest, a local advisory committee is appointed to explore specific problems such as finding an office site, possible sources of funds, setting up the basic 12-week training sessions, and finding staff and volunteers to man the program.

The local committee is linked to the regional and national committee through representation. Regional committees are chiefly working groups focusing on particular problems that have come to the fore from the monthly reports gathered from local Bureaus. These committees always include the legal profession, along with ministers, social workers, Government members, businessmen, housewives, health and education representatives.

The policy of the service is governed by the national committee. It has a secretariat which (*a*) arranges the biennial national conferences; (*b*) carries out the provisions of the National Information

Service, stimulates promotion of new bureaus where they are needed; (*c*) sees to the training program for workers; and (*d*) to the collection of evidence and reports for Government departments and national organizations. The secretariat is financed from the funds of the National Council of Social Service which come from Government as well as private sources. This arrangement is in line with the philosophy provided for under the Charities Act of 1960 (which established beyond question the place of the voluntary agency in modern government). The English social welfare community saw this Act as a milestone in the history of voluntary action, as well they might, for it gives statutory strength to the principle of cooperation on equal terms between voluntary agencies and statutory bodies.

Bureaus take on the responsibility of studying all fresh legislation. They do this through Citizens Advice Notes Service, known as CANS, and a monthly information service of circulars prepared at the national office.

The Citizens Advice Notes Service is today a thick looseleaf notebook, in sharp contrast to the original four-page pamphlet of 1939. Commonly called the Bible, it contains a host of material, briefly and clearly spelled out on Government laws and regulations, voluntary and statutory agencies and services, local resources of all kinds, lists of public officials and their areas of jurisdiction as well as lists of accumulated information and knowledge gained from experience. The notes are kept up to date by a group of men at central headquarters, one a paid staff member with legal knowledge and three retired civil servants.

The information service is a monthly bulletin of similar kinds of data designed primarily for staff and for training. It is perhaps the most comprehensive service of its kind available through a social work organization and is therefore in constant demand by other agencies and local authorities.

Legislative and Legal Activities of the Bureau

In the Southwark Report of 1956 it is stated that the Bureau has a watchdog function which brings to light hardships and anomalies faced by citizens under legislation as well as in commercial dealings. Over the years evidence has been submitted to Government on a variety of subjects.

In 1952 they provided data for the Commission of Marriages and Divorce, and for the Ministry of National Insurance on hardships arising out of the National Insurance Act.

In 1953 their material was used for the enquiry on disabled persons with special reference to their retirement age, employment, training, etc.

In 1949 the Legal Aid and Advice Act was passed by Parliament. Miss Oswald, Executive Secretary of the National CABs, was

on the brain trust that worked out the details. She also helped draw up the subsequent three amendments passed in 1959, 1960, and 1964. She and the CAB's were instrumental in urging that this legislation be done piecemeal so that corrections and additions could be made on the basis of experience.

The Legal Aid and Advice Act, with all its amendments, provides that any person over the age of 16 may receive legal advice orally, on application from solicitors in ordinary practice who have voluntarily joined the legal advice panels administered by the Law Society. The Act sets up a means test which is rather flexible in that basic assets such as ownership of a house are not included as available means. Only those assets which are readily available are considered. There is no fee for welfare families with less than $125 in assets. Fees range from 35 cents to $2.80 for one-half hour of oral advice. There is a charge for filing the application, but this is often waived when CAB's refer the case. The secretary of the local legal aid committee passes on applications but their refusal of an applicant may be appealed. Applicants may choose their own solicitors from among the panel and the Act permits all cases that involve English law. However, matrimonial cases are handled by lawyers specifically designated by the Society. Criminal cases are aided by the Director of Criminal Prosecution as requested by the Queen, if the defendant asks for help. A barrister is then designated to try the case before the court. The 1964 amendment provides for payment by the state to the opposite party where the legally aided defendant has lost the case, if it seems just and equitable.

Discussing the Act, Mr. Edgertown, chairman of the committee responsible for working out the provisions, states that it represents a complete change of outlook in the thinking of lawyers and of the country as a whole. The Act embodies, says he, the decision of Parliament that charity alone, supplemented by the old poor man's lawyer, was no longer adequate to meet the need for legal aid and advice for people of limited means in our kind of society. The Right Honorable Lord Denning, Privy Counselor, in his address to the 1957 CAB Conference, paid them a glowing tribute when he said, "CAB's played an important part in the social revolution of our times. They have smoothed out the friction and oiled the bearings of the whole machine, all within the short space of twenty years."

Statistics covering the year 1959–60 showed that 8,400 solicitors had joined the legal advice panels and that during that period 12,800 applications for advice had been dealt with.

Although many CAB's still find it necessary to maintain their voluntary legal advice sessions at the Bureaus, others, particularly outside of London, have closed down completely. In London, however, the need for free legal advice continues. In fact one of my most

impressive experiences was a visit to Toynbee Hall Settlement in the East End of London one evening when 8 experienced solicitors and barristers were giving free legal advice to some 30 local residents on matters primarily of housing, matrimonial conflicts, and credit purchases. The atmosphere was casual with a touch of camaraderie. The fact that it was performed in the neighborhood, in a familiar setting seemed to make the process easier and quicker. After 2 or 3 hours of work everyone was taken care of and the Settlement served supper to the volunteers.

One lawyer to whom I spoke said he planned to give about 3 to 4 years of such service, one night a week and then to influence a friend or a newer member of his firm to replace him. Another said he found the experience stimulating because, in addition to the work, it gave him the opportunity to exchange ideas with men in different fields of law. This practice goes on in three settlements in the East End as well as many other settlements and CAB offices.

Consumer Legislation

The most dramatic activity of the CAB's in recent years has been their role in the field of consumer problems. In 1955, due to the increase in consumer complaints brought to Bureaus, the National Council of Social Service set up a subcommittee to study the problem. It published the findings in a pamphlet called "Hire Purchase and Credit Buying" along with a leaflet on do's and don'ts for the consumer. Material for the study was gathered from all CAB offices, as well as from casework agencies, settlements, welfare, and probation workers. The purpose, as stated, "was not to criticize the principle of hire purchase (buying on credit) but rather their concern with the effects, where evidence showed that much stress and unhappiness result from failure to relate the amount of periodical payments to the income which can reasonably be expected to be available for families to meet their obligation over the period for which it is due."

They found, as we did, that high pressure salesmanship is extensive and that, as applied to individuals with little sales resistance or insufficient money to pay for this weakness, it constitutes the greatest single cause of the subsequent difficulties for purchasers—"and their evidence too suggests that the most harmful forms of such pressure commonly occur on the doorstep." When I discussed the evidence with Mrs. Davis, administrative staff worker at CAB central headquarters, she cited cases in their reports as stark as any described by David Caplowitz in his study, "The Poor Pay More." Mrs. Davis said these problems were found among the British in new public housing estates and new towns where there were neither Negroes nor Puerto Ricans. And they were equally prevalent in the old established working class districts as among immigrant groups. In fact

a CAB report of Birmingham showed that hire purchase and other consumer inquiries there increased from 20,000 in 1958 to 52,000 in 1960.

In New York City a year and a half ago a casual inquiry at the one consumer council office in downtown New York, by some of us who were involved with the David Caplowitz study, revealed that only 2,000 requests for help by consumers had been made in one entire year. Only a glance at the Caplowitz study would indicate how utterly inadequate is our approach to this problem in New York City.

As a result of the findings of the CAB the Government appointed a Royal Commission which has produced the well-known Molony Report. It recommended, among other things, the establishment of a consumer council, which has since been organized. A key member of the Commission was again Miss Oswald, along with members of the legal profession and the Board of Trade. Comment of the lawyers was, "It is plain that CAB's have already developed an advisory and information service and that they are in closer touch with consumer problems in a way unequalled by any other organization."

On the basis of these recommendations, Government has requested CAB's to serve as the local consumer information and advice centers. CAB's today are pushing for legislation on the wording of contracts for purchases, and on extending the time permitted for housewives to retract on contracts they may have been high pressured into signing.

Among the most distressing of unethical sales practices reported by CAB's were: (*a*) The selling of photographs of children at vastly inflated prices for weekly payments. In some cases the salesmen sell the debt to other firms when the account is nearly paid up. (*b*) Agents selling educational books wait outside of schools to get from children their names and addresses and the names of their teachers. They then go to homes representing themselves as coming from the school system.

The similarity of the situation in England with our own, yet the comparison of what the British are doing to cope with the problems as against our own efforts, clearly shows how little concern we have, not so much for legislation as in providing the means for citiens to make good use of the law once it is enacted.

CAB's most recently have also participated with the Law Society in studying the gaps in the law relative to citizens' liberties and rights in relation to Government. This issue has attracted the attention of the public, Parliament, and the legal profession. Possible solutions suggested have been: (1) Increased scope for their councils on tribunals. These are Government-established bodies available to the ordinary citizen who thinks he has not been dealt with fairly by a

division of Government administration. In the year 1960, more than 60,000 cases primarily relating to pensions and insurance were dealt with by tribunals. (2) A second solution considered was an increase in the powers of the committee on petitions. (3) The third solution, presently under consideration, has been used quite successfully by the Scandinavians, and is known as the Ombudsman. A study of this method has just been completed by the Law Society, with material contributed from the experience of CAB's.

It would appear that the English are many years ahead of us in their recognition of the need for social welfare services as well as the need to establish safeguards to protect the individual. CAB's, tribunals, public petition, Ombudsman, and legal services to the general public, these are measures that lead to a more balanced relationship between the public and its servants. They help the citizen make the best use of public or private bureaucracy—in the best sense of that word, and they keep the bureaucrat more responsible to the public.

There is little doubt that today the bulk of these provisions serve the less privileged in England. These are the same kind of people for whom the poverty program is being provided in America, the immigrant, the minority, the transplanted worker, the unemployed, the old, and the poor in need of advice and help whether in city or rural area. Yet the British saw fit to make these services available to all citizens in order to retain the democratic concept of equality, to remove the stigma of separateness, and to provide a broad base from which to gather reactions on how these services and laws function.

We would not be the first to adopt Citizens Advice Bureaus. Recognition of their value has reached across oceans and continents. Information about them has been sought by Canada, India, Egypt, and Burma. Bureaus have been established in Georgetown, British Guinea, Perth, Australia, and Haifa, Israel, and Nairobi, Kenya. Holland is studying CAB's for possible use, and Denmark, in spite of having an Ombudsman, has appointed a commission to consider the need for them.

Said Sir George Haines, national chairman, at the 1964 Conference, "It is a revelation to see a CAB at work in another country, not because it is so different from those at home, but because it is so much the same."

Implications of CAB's for the United States

I believe this remarkable yet simple and inexpensive service can achieve as much for us as it has for the British—if we make it available to all our people, if we develop it from a local level at a pace the community can absorb, and if we retain its flexible, independent, free-wheeling qualities and the combination of volunteer and professional in all aspects of its work. While I realize that some of these requirements might prevent its use for the poverty program,

these obstacles could be overcome if foundations shared the cost with government as they did so successfully in England.

This program would open up the possibility of a firm relationship between the lawyer and the social worker as never before. The legal profession, I know, has taken steps toward helping the less privileged through voluntary legal aids in many cities. And social workers in the States have begun to reexamine their functions in relation to the needs of their clients today.

The British social worker, with the impetus of the war and the social upheaval, progressed more rapidly from charity to broad social welfare to greater concern with social justice, and more slowly with treatment of the individual's emotional problems. Meanwhile, we, in America, proceeded from charity to limited social welfare, with greater emphasis on the individual and his problem; when too often the problem became his because of the social situation in which he found himself and about which he could do comparatively little until recently. We social workers are essentially ignorant of the vast variety of laws that affect the lives of our clients—this is equally true of the British—except for the CAB workers. It is not because we do not want to know the law, but rather because we tend to focus on persons rather than issues. But it is the job of the CAB worker to know the answers or where to find them, and she is given every assist in this direction. This requirement, of necessity, puts her in touch with the legal and with other professions, enabling her to begin to accumulate her own body of knowledge and resources to perform her ordinary task.

I could not close my talk more appropriately than by relating the story told by Lord Denning at a CAB conference, because he seems to have caught the most significant point of reference between law, social work, and society when he speaks of Christian, in the story of John Bunyan, who was an ordinary man seeking social justice, who, after being sent from Mr. Worldly-Wise to Mr. Legality, neither of whom could solve his problem, finally went to the Evangelist, whose primary gift was love, permitting Christian to unburden himself, because, said he, love finds its primary form in social justice—and this is the role of the CAB's.

Education on New York's Lower East Side

Edward V. Sparer
Director
Legal Services Unit
Mobilization for Youth

The usual educational program on legal matters consists of the distribution of some pleasantly written booklets which set forth the law in various given areas with, perhaps, some general advice about consulting a lawyer when actual problems occur. Typical, for example, is a set of illustrated booklets put out by the New York State Bar Association for general distribution. The booklets lie around various offices and agencies dealing with the poor, middle class, and others. Once in a while, someone looks at them. Such efforts on the whole are more than ineffective—they are a downright waste of time.

We suggest that consideration of the social characteristics of the community may lead to a program of greater effect. On New York's lower East Side, the impoverished are not highly literate (therefore no flood of booklets has been planned). The major experience of most of the poor with the law has been in the use of the law by landlords, police, merchants, governmental agencies, etc.—but not by the poor themselves (therefore, we have been concerned with *demonstrating* to poor persons that the law is their ally as well). The overriding impression given by many of the impoverished is that they profoundly distrust lawyers (therefore we have sought some ways and means of permitting the community to see lawyers who work on their behalf in a daily and persistent manner).

In brief, the educational program the Mobilization for Youth Legal Services Unit has chosen to experiment with is one conducted in the context of an ongoing program of legal action on behalf of the poor. Set forth below are some of the "rules" for such an educational program and some concrete illustrations of those rules as engaged in by the unit.

Simple but Basic Information, Readily Available, Which can be Utilized at the Point of Greatest Need

Our illustration here concerns rights of arrested persons in the police station. The Mobilization for Youth Legal Services Unit set up a program under which it offered to make a lawyer available to any youth in any MFY program or in street groups with which we were in contact. We told the youths about it. We told the social workers, job counselors, and every other relevant person about the program. We stated what an arrested person's rights in the police station were. Enthusiasm was high—but the program was, basically, a failure.[1] The lawyer—though availabe for night and weekend calls—was not widely utilized.

As best we have been able to determine, most of the persons who knew of the program simply "froze" when they were in the police station. They forgot their various rights. They forgot where to call for a lawyer. They felt too unsure of themselves to argue with—or insist upon anything with—the arresting officer and the desk sergeant.

The legal services unit then concluded an alternate strategy. We have ordered little wallet size cards which briefly state (in English on one side and Spanish on the other) what one's rights are—gives a phone number for young people under 22 [2] to call or ask the officer to call [3] upon arrest (if the person cannot afford his own lawyer)—and tells the person the message to leave with the answering operator (who will then reach the lawyer). The cards will be ready for distribution within a week or two from the date of this writing.

We speculate that the cards will be far more effective in educating young people as to their rights upon arrest than the excellent booklets of the State bar association or the law students civil rights committee. Such cards make the necessary information readily available at the point the information is most needed. The cards make possible a combination of knowledge of "rights" with access to lawyers under the most difficult of conditions.

Integration of Legal Services Into Community Development Programs

The laws of New York—and those of many other States—afford a variety of means whereby slum tenants can act to compel landlords to repair dangerous and unhealthy conditions in the tenement.[4] How-

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[1] The program was a failure insofar as it was not utilized by large numbers of youth. There were a limited number of experiences under the program which demonstrated, in the writer's opinion, the value of police station representation. Insofar as such demonstration was a major purpose of the program, it was an important success.

[2] The unit concluded that it lacks the staff to service the whole of the impoverished adult community during the hours when calls might be expected.

[3] New York statute is explicit in its grant of right to arrested persons, whereby they may insist that the desk officer make three phone calls on their behalf.

[4] See Why Tenants Need Lawyers, by Nancy E. LeBlanc of the Mobilization for Youth Legal Services Unit, presented at this conference.

ever, the tenants are often quite afraid of their landlord's power. How does a lawyer effectively educate the tenants on the availability of those rights and his availability to help enforce them?

The primary way, we suggest, is not by offering classes on "tenants' rights" in a neighboring agency headquarters (though such classes may be useful as part of a broader program). The effective way is to integrate the lawyer's services into a tenant council's organizing effort. It was through such means that hundreds of tenants on the lower East Side were taught of the existence of the legal right [5] to "rent strike" (actually, to withhold rent from the landlord and offer it to a court fund until repairs are made). Such tenants' councils could become the most appropriate forums for lawyers interested in educating slum tenants of the wide variety of rights available to them.

A similar technique was used in the short-lived "Consumer's Aid Clinic" of Mobilization for Youth. A community development organizer canvassed and brought together a number of persons who had suffered under various kinds of sharp practices (as well as under legitimate but harsh installment contracts). A lawyer was brought to their meetings to discuss the problems they faced. One or two cases were chosen for legal action. Soon the persons who first came brought their friends who had problems as consumers of the same and different sorts. At each point, the lawyer pressed legal action where such was possible—and also pointed out what should have been avoided (when legal action was not possible). The clinic, through action and grappling with real problems, was a major educational device for the several score people who were involved.

Developing the Social Worker Generalist Who Educates His Clientele

No matter what the improvement in legal services for the poor, it is likely that there will never be enough lawyers to do all the education that's needed, and also do all the representation that's needed for the poor in a slum community. Certainly this is true for the lower East Side of New York. The lawyer's task then is to develop a set of allies who are in regular contact with large numbers of poor, who can "spot" general legal problems, and who are capable of sensitizing the community to the occasions when a lawyer is needed. In our community, at least, such an ally is the social worker.

Mobilization for Youth social workers—and those of other private agencies in the lower East Side—are in regular contact with thousands of the most desperately impoverished. Among these thousands are large numbers who are not willing to take part in "action" projects—and who are certainly not prone to seek out lawyers on their own initiative. Yet they are often the most exploited, the most seri-

[5] See § 755, R.P.A. and P. Law of New York.

ously disadvantaged, and the most in need of legal help and legal education in the community.

Social workers see and talk casually with this important section of the community. To the extent social workers are attuned to the kind of legal problems such people face—welfare problems are a major example—social workers in turn can sensitize the people and encourage them to seek needed legal help. For this reason, a large part of the educational planning of the Mobilization for Youth Legal Services Unit is directed not toward the community directly, but toward the social workers in the community. Developing the social worker "generalist" is a main educational goal.

Most Important of all the "Rules": Doing Concrete Work—Gaining Trust

Just being in the community—in an immediate neighborhood of the poor—working there and getting (at least occasionally) some results, is the single most important rule for a lawyer—or anyone else—who seeks to "educate" the community. If he does a good job in the neighborhood, he will become known. People will come with problems. He can act on some and educate others. A force will be generated in the community. When lawyers—or others—prove themselves to the community, they will find the audience they seek.

A final word on the methods of education here discussed. It is obvious that a question may be raised as to whether such methods are violative of the traditional "rules against solicitation" by lawyers. They might be. It is such versions of the rules against solicitation that need to be abandoned, however, and not these proposed methods of educating the impoverished as to their legal rights.

Legal Aid Educational Practices

Junius Allison
Executive Director
National Legal Aid and
Defender Association

A Monday visitor to any large Legal Aid office will find a room full of pilgrims of our social order, many of whom are victims of some bad advice, misdirections, the unfortunate conditions and other snares and pitfalls known to Bunyan's Christian on his pilgrimage from the City of Destruction to the Celestial City. They have known the Sloughs of Despond, the By-path Meadows, and they have encountered Mr. Money-Love, Mr. Worldly-Wise, Ignorance, Doubting Castle, and Mr. Smooth-man.

Certainly, some of these have recklessly agreed to pay more money than they could afford, but some, through ignorance, obligated themselves for payments they could not make, and a great number of the more vulnerable succumbed to the soft touch of the loan-by-phone boys or signed in blank in order to get some gadget or secondhand household article.

It is also true that many would not respond to budgetary instructions, preventive advice or warnings against the loan sharks or greedy landlords of the submarginal tenement districts.

It is also clear, however, that much suffering and deprivation could be prevented and much gouging and victimizing could be eliminated with proper counseling and timely advice concerning contracts, leases, garnishments, wage assignments, insurance policies, welfare benefits and other matters ol legal dimension where the lawyer could be helpful before a crisis arises.

This predicament was succinctly described by Attorney General Robert Kennedy last May in a Law Day address at the University of Chicago Law School when he said:

In the final analysis, poverty is a condition of helplessness—of inability to cope with the conditions of existence in our complex society . . . [W]e, as a profession, have backed away from dealing with that larger helplessness. We have secured acquittal of the indigent person, but only to abandon him to eviction notices, wage attachments, repossession of goods and termination of welfare benefits.

This is not to imply that nothing is being done; rather, it is to suggest that we must do more. Legal Aid attorneys looking into the faces of these bewildered people are, naturally, the first to realize that something beyond advice or representation in the immediate difficulty is urgently needed. The preparation and dissemination of preventive information is attempted in various forms over the country. It is impossible to measure the effectiveness of these efforts, for each week seems to bring to the Legal Aid office a new wave of troubled clients, plus several who were there last year or even last month.

In a few places, the Legal Aid lawyer participates in seminars initiated by social agencies. In these jointly sponsored meetings, caseworkers learn certain fundamental legal facts which will assist them in their social work. This also facilitates intelligent referrals to the Legal Aid office as the staff interviewers are briefed on how to identify legal problems among their applicants.

A typical arrangement might call for the attorney to discuss eviction matters at one meeting, installment contracts at another, then domestic relations, workmen's compensation, and similar matters affecting the low-income group. Mimeographed outlines are frequently provided and each presentation is followed by a question and answer period.

This same format may be used for workshops at union meetings where the counselors wish to be advised on general legal provisions of statutes relating to problems of the laborers. In a few instances, this workshop plan is extended to church groups and PTA gatherings.

Then, on a day-to-day basis, most Legal Aid attorneys consult with caseworkers concerning their individual clients. Such early consultation helps to discover legal situations that should be referred to the lawyer before irreparable damage is done.

Some offices draft statements in nonlegal language for the potential clients. These usually relate to consumer credit matters. One such attempt at preventive law is entitled "How's Your G.R. (Gyp Resistance)?" and has been reprinted in the journal of a better business bureau. In addition, many bar associations distribute pamphlets on a variety of problems which are of interest to Legal Aid clients.

In a few cities, Legal Aid prepares regular newspaper columns devoted to general legal topics of public interest. The now syndicated feature, "Your Family Lawyer" which the American Bar Association sponsors, is the approach usually employed.

Periodically, radio and television programs are developed in cooperation with local bar associations where there is general discussion of the pitfalls of such practices as signing an uncompleted form, executing a document without reading and understanding the small print, ignoring a summons, delaying in making payments on insurance policies or failing to pay rent when it is due.

Practically all of these preventive efforts must be carried out at the State level, since laws differ from one jurisdiction to another. This local treatment is necessary even though the information given is not to be taken as advice on a particular legal problem, but is provided to give general facts which will make the consumer more cautious and encourage him to seek the advice of a lawyer when a personal question arises.

The NLADA encourages its members to engage in these preventive efforts. As an indirect way of avoiding needless entanglements, the NLADA has made available a somewhat uniform statement which is designed to advise the public, the community agencies and the client on how the Legal Aid office can help. It is called "Information About Your Legal Aid Office."

Even though we realize that no one of these methods—nor all of them together—will fulfill the objective of curing the legal ills brought on by carelessness, ignorance, and by unscrupulous sellers, but a wider and more intelligent use of these devices will go a long way to educate the people in the low-income group of their rights, and help place them on equal terms with those who might take advantage of their poverty and lack of education.

SUMMARY OF DISCUSSION

Forewarning the Low-Income Community of the Most Common Legal Difficulties: Educational Method

It was significant that there was little discussion by panelists and participants of an educational method appropriate to forewarning the low-income community of potential legal difficulties. It seemed evident that little work has been done in this area, that what has been done has not been attended to systematically, and that there may be problems in the complex nature of legal knowledge as well as the capacities of the recipient which make such communication difficult. All were agreed that it needed to be done, but the views expressed ranged from complete pessimism to qualified optimism. The problems identified by the discussion can be categorized as: (1) cultural or social-psychological, (2) professional, and (3) methodological.

Cultural

The staff of the Harlem Services Project pointed to the community apathy and cynicism common to many groups at the bottom of the income ladder. They view law and the lawyer as using them, rather than as institutions to be used by them on behalf of their interests. Moreover, literature, pamphlets, newspaper columns, etc., were by and large lacking in usefulness because they did not read these materials, and if they did, usually failed to understand and to apply the information provided. However, some simply prepared material appropriately timed to connect with a present concern such as individual rights under the law of arrest, and conveniently arranged so that it might be carried as a card in one's pocket, or available at the police station, was found to have some utility.

One of the significant difficulties in the use of legal services and education as a means of preventing future problems is the proneness

for getting into legal difficulties that many poor people have. For this reason, according to one panelist, one frequently feels as if he is "sweeping the ocean back with a broom." This resulted in the raising of the question, without further analysis, as to whether the individual case is the most useful unit of service or the underlying "situation." A case that results in the reform of a situation may, in fact, have genuine preventive value.

Professional

Concern was expressed by a panelist on the issue of aggressive case finding on the part of the lawyer and the loss of professional dignity this implied. In addition, he felt, perhaps a higher priority should be given to providing professional services to those charged with criminal acts since many poor people are sent to jail without any legal representation. No response was made to the latter issue of priority, but the following points were made with reference to the concern over the loss of professional dignity:

1. The lawyer is viewed as a "specialist in power" by the low-income community, therefore his intervention, even through a mere phone call, may be significant.

2. The point is not that the lawyer be a door-to-door vendor of his services, but that he be available to low-income groups that have been organized by others in the conduct of their professional responsibilities.

3. The poor are usually the victims of legal actions; they also have a right to bring others into court who are exploiting them.

A neglected area was underscored by one participant, that of legal services for "the forgotten 60 percent," those who want to and are able to pay some small amount for legal assistance.

Methodological

Direct and indirect methods of educating the poor were discussed. Except as noted above, there was general agreement that providing written information was generally nonfunctional as a direct method for reaching the poor. An argument was made that the crucial aspect was for the lawyer to be available to an individual or group at the point where help was needed. The assumption was that the low-income individual or group would have a learning experience when the lawyer was present to help in a problem solving process. The experience at the Harlem Services Project was that (a) going to the people, to their own local organizations and eliciting what their problems were, and (b) flexibility of meeting place (church, store, recreation room, etc.) showed promise.

Indirect methods discussed were the provision of legal advice to professionals such as social workers who are working with the poor. This can be done through local legal aid offices, and on the national level through the "Legal Aid Briefcase" which provides suggestions to

local offices on the publicization of the office. These methods have not been especially successful. Rather than reliance upon formal methods of communication between lawyers and social worker (lectures, written materials, etc.) one suggestion was that lawyers and social workers work together in the same organization.

While not an educational method, on the preventive side the point was made that in Illinois a change in the law in 1953 now provides that a zoning violation may lead to the defendant's paying the plaintiff's fees, and that this has led to a growth of civic interest by the legal profession. This led to the question being raised of the effect if housing laws were amended so that if a landlord was in violation, the tenant who sued would also get his attorney's fees. The landlord usually has this right in relation to the tenant's violation of his lease. The law schools and lawyers could "study this whole housing situation to find out what there is in the way of legal sanctions that is going to turn the social and economic factors around so they will work in favor of property improvements rather than property exploitation."

PANEL IV

The Lawyer and the Social Worker

INTRODUCTION

Even before the conference undertook express consideration of "The Lawyer and the Social Worker," this subject had run as a recurring theme through all of the preceding sessions. The legal needs of the poor, it had been pointed out, are particularly urgent in the public or administrative law field, notably including the public welfare programs which are so strongly identified with the social worker. The juvenile courts, another focus of the legal problems of the poor, have been shaped importantly by social work ideas and are staffed significantly by social workers. Many other illustrations could, of course, be added. The most cursory discussion of the provision of legal services in the setting of the neighborhood house would necessarily include the relationship and respective roles of the lawyer and the social worker. The session on forewarning the low-income community of the most common legal difficulties perforce dealt primarily with these matters.

While the prior sessions had more or less explicitly considered the relationship of the lawyer and the social worker in the furnishing of legal services to the poor, the panel on "The Lawyer and the Social Worker," and the subsequent open discussion and workshops, for the most part examined some of the broader ramifications of the subject. Much attention was given to law and the social worker—the role of the social worker in our present-day legal machinery, what the social worker should know about the law, and how this knowledge might be furnished. Conversely, the topic of the lawyer and social work was also considered, although to a somewhat lesser extent—what the lawyer should know about social work, and the use of law and the lawyer as instruments of social change.

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A few general points perhaps bear mention, since they underlie much of the discussion and were not completely spelled out. It was assumed that virtually all social workers should have considerable (although not necessarily detailed) knowledge of the law, legal principles, and legal methods. This suggests the need for revision of curricula in social work schools and for developing ways to inform social workers who are already on the job about these matters. On the other hand, it seemed to be assumed that a comparatively much smaller proportion of lawyers needs to know a great deal about social work. Accordingly, there is less reason for law schools to emphasize the subject; and since such courses, even if offered by law schools, are usually optional, and continuing legal education is left entirely up to the individual lawyer, who is usually overbusy, there are serious problems in furnishing knowledge about social work philosophy, goals and functions to those lawyers who, as their careers develop, have need of it.

Finally, there was some difficulty in coming to grips with the relationship of the lawyer and the social worker because of the many different types of situations in which it occurs. To give only a few examples, from the point of view of the lawyer: the lawyer in private practice who is involved in an adoption or domestic relations case, or represents a client (e.g., landlord) against a low-income opposing party, or represents an occasional low-income client; the lawyer who, as a career, represents low-income clients; the lawyer in a neighborhood house; the lawyer in a test case, seeking change in the law; the lawyer seeking change in statutes, or advising clients who are seeking such change; the lawyer in a public agency, advising the administrator concerning needed changes in law, or the scope of administrative discretion under existing statutes, or the rights of beneficiaries under existing law, or defending the agency against suit by a claimant; the lawyer advising a private agency; the prosecutor; the judge. Suffice it to say that, against such a background of diverse situations, generalities are even more than usually suspect.

Cultivating Social Perspective in the Lawyer: Specific Problems

Jacob T. Zukerman
Co–Chairman
National Conference of
Lawyers and Social Workers

Every so often, a fellow lawyer tells me of a recent experience in which he has found the problems of his client to be more social or emotional than legal in nature and that he wished he knew a little more about how to help his client with the other than legal phases of the situation. When an attorney is able to recognize that more than a legal situation is involved and, particularly, when he understands his own limitations, the chances are good that he will find some way of helping his client to secure needed casework and/or psychological service.

Unfortunately, not every lawyer knows enough about the other helping professions, nor even about himself, to be able to recognize the importance of working together with the social worker in attempting to get at some of the basic causes of the difficulty which so often is presented to him as a purely legal matter. What can be done, then, to cultivate social perspective in the lawyer?

For a number of years, a committee of the Family Service Association of America has concerned itself with this question. In 1959 it issued an excellent report entitled "The Lawyer and the Social Worker—Guides to Co-operation." Out of the work of this committee and of similar movements among the bar itself came the creation of a section of family law within the American Bar Association.

Later, in 1962, there was organized a National Conference of Lawyers and Social Workers, a coordinating body of representatives of the American Bar Association and the National Association of Social Workers. Among the points of major emphasis of all of these groups, there has been prominent an attempt to develop a better understanding and active cooperation between these professions and

to assist each profession to understand how the other may be helpful to the clients coming to each.

Thus, for example, committees of the National Conference of Lawyers and Social Workers have been working, or will be soon, in such areas as: adoptions, legal counsel to voluntary social agencies, intake in the family court, civil rights of public assistance clients, and on comprehensive mental health and mental retardation plans. As a matter of fact, two proposed statements, one on adoptions and the second on legal counsel in social agencies hopefully will be approved by the American Bar Association in February. They have already been sanctioned by the National Association of Social Workers.

The work of these groups has suggested some of the areas of mutual concern to lawyers and social workers; there are undoubtedly others, certainly around such matters as marriage counseling, juvenile delinquency cases, and debt adjustments, in which there is normally much more than a purely legal problem indicated. Yet what efforts do most lawyers make to enlist the help of the local family or children's agency in dealing with the issues involved?

It is my impression that many lawyers do not even know what a social worker does or how he is trained. A recent study conducted in Buffalo, for example, as part of an institute for attorneys and social workers [1] indicated that half the participating lawyers did not know that professionally trained social workers get a graduate degree after 2 years of study and fieldwork. Similarly many lawyers are unable to distinguish between a trained social worker and an untrained worker, since in most cases their contact has been only with the latter group. Yet, "Social work *is* a profession. It has a methodology. The trained social worker has undergone vigorous training and has learned certain techniques." [2]

The social worker can be helpful not alone to the clients whom he serves, but to the attorney in helping him to understand more of either the familial or social situation out of which the presenting problem has arisen. Thus the proposed statement of the National Conference of Lawyers and Social Workers dealing with adoptions points out that "the social worker's function is to: (1) help the natural parents with the distinctive social and emotional problems connected with considering the future of their child, consideration of alternative plans as well as giving him up for adoption, (2) provide any casework help related to the natural parents' own problems and need for rehabilitative help, (3) help individuals seeking to adopt children to determine whether adoption meets the needs of the prospective adoptive parents . . . (6) provide assistance to the child

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[1] Sponsored by the Bar Association of Buffalo and Erie County and the Western New York Chapter of the National Association of Social Workers, October 1963.

[2] Sanford N. Katz, "The Lawyer and the Caseworker: Some Observations"—Social Casework, vol. XLII, No. 1—January 1961, p. 13.

and parent during the period of adjustment between placement and legal adoption."

Similarly in matrimonial matters, the client, who comes to an attorney for a divorce from the father of her three small children, may need the help of a family agency in determining for herself whether a divorce is really what she is seeking, or whether there are better ways of dealing with some of the difficulties which have led to her seeking the divorce. Of course, the legal implications are equally important. Thus the social agency alone cannot be of full help to the family, but the lawyer and social worker operating as a team may be better able to help the client to determine her best course of action.

As the previously mentioned family service association report suggests:

Not all marriage partners who are in serious conflict with each other will recognize the desirability of seeking the caseworker's help. Indeed, some may not be able to use it under any circumstances. But the lawyer can, when he perceives the need, encourage his client to consult a caseworker and can facilitate the client's doing so by making an appropriate referral. Frequently, the custody of children is at stake, and their welfare is intimately affected by the outcome of the parents' decision in regard to the marriage. In these instances, it is especially important that the alienated marriage partners secure maximum help in finding a sound solution to their conflict.[3]

Even more so does the need for interprofessional cooperation exist in the case of legal services to the poor. How can one fully understand the legal implications of a debt adjustment or of a landlord-tenant controversy over "destructive" children or of a petition against a parent for child neglect without reference to the sociocultural, economic and, often, the psychological components of the little world in which the legal situation has developed?

What are some of the ways in which we might help the lawyer to begin to understand the need for recognizing other than legal implications, to learn when and where to refer a client for casework help? As Sanford Katz has pointed out, "the lawyer and the caseworker share in a heritage of social responsibility and of concern about human relations."[4] He quotes Dean Griswold of Harvard Law from a talk advocating that more concern be placed on training law students in human relations:

. . . lawyers constantly deal with people. They deal with people far more than they do with appellate courts. They deal with clients; they deal with witnesses; they deal with persons against whom demands are being made; they carry on negotiations; they are constantly endeavoring to come to agreements of one sort or another with

[3] "Guides to Cooperation—The Lawyer and the Social Worker"—Report of the Committee on Lawyer-Family Agency Cooperation, Family Service Association of America, New York, 1959, p. 23.

[4] Katz, ibid, p. 14.

people, to persuade people, sometimes when they are reluctant to be persuaded. Lawyers are constantly dealing with people who are under stress or strain of one sort or another.[5] Katz goes on to suggest that the lawyer, like the caseworker, is engaged in a "helping" relationship, and thus makes a purposeful effort to enlarge the individual's capacity for self-fulfillment and self-management. To what extent, then, is he properly trained to do so?

We know that very little is being done in the law schools to prepare lawyers for their own roles in interviewing and counseling, let alone for knowing how to utilize other helping resources in the community. No casebooks or texts are available to give the law student information about such resources. This is one area which needs further development—and I am pleased to note that there is a session scheduled at this conference to deal with the role of the law school. Certainly the law school might consider the possibility of the teaching of family law by both law and social work professors. They might even try what some theological and medical schools are doing—field-work instruction and/or practice in a social agency. If we can make the law student aware of the social implications, and a little more sensitive to the basic elements of interpersonal conflicts, we will be preparing him the better for his role as a counselor at law.

But to really begin to meet some of the challenges in this area of interprofessional relationships, there needs to be developed in every community, lawyer-social work committees, sponsored by the local bar associations jointly with the professional social worker groups and with local family, children's and other social agencies. The initiators might well be, as is the case in a few instances, the council of social agencies or the bar groups themselves. These might follow the leadership of the National Conference of Lawyers and Social Workers in dealing with specific problems of concern in the particular locality, such as adoptions, marital counseling, juvenile court services, civil rights, civil liberties, mental health, installment contracts, housing, etc.

Certainly in the area of social legislation, there is a crying need for active participation by both the organized bar and the social work profession in studying community needs, in developing positions, and in the actual writing of proposed laws or administrative procedures to deal with these problems. Very often, attorneys become better acquainted with community resources through such intergroup activities. As a result, they become much more aware of the social, economic, and psychological implications of the problems involved in the situations presented to them by their clients, problems which the clients, themselves, may judge to be purely legal in nature.

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[5] Ervin N. Griswold, "Law Schools and Human Relations," Chicago Bar Record, vol. XXXVII, No. 5 (1956), p. 203.

I do not mean to suggest, as some may be led to believe, that we need to make social workers out of lawyers; nor would we want social workers to play the role of lawyers. But it is in the best interests of the client who comes to the lawyer that his attorney shall be aware of other implications in the problem presented, and that he shall be alert to the client's possible need for the kind of help and guidance which can best be provided by a social worker in an agency which is better geared to offer that kind of help.

Nor do I pretend that every client needs such help, nor that every client will be willing to seek and accept such guidance. Thus the law office need not become an intake or referral service for the field of social work.

I think that most of us will agree, however, that many problems presented to an attorney are complex enough to warrant a look at the social, cultural, or psychological components of the total situation. The attorney may then be in a better position to advise his client as to his legal rights and obligations, as well as to the possible consequences of the legal action he suggests. If in the process the client does receive other kinds of professional help in dealing with the basic elements of the problem, it is all to the good. It is this kind of social perspective that we should strive to develop among the members of the bar.

Providing the Social Worker with Legal Understanding: Specific Need

William T. Downs
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When Solomon made the decision which earned his place in history as a judge—as the very epitome of a judge, and of wisdom—he made what was basically a psychological decision.

When the legislature, after due deliberation, makes a decision which results in proscribing some act or pattern of behavior, making it a crime, it is in effect also making a sociological decision.

When a department issues rules and regulations governing the conduct of individuals, or groups of individuals, in the process it is making a number of decisions which are in part legal, sociological or psychological.

When the courts, or other tribunals, enforce the act of the legislature, enforce the rules and regulations of a department, or decide between individuals, they in turn make a number of decisions which may be psychological or sociological.

The end result in each of these instances, the ultimate decision in each forum, we call "the law."

When the final decision arrives, it suddenly takes on an immutable, an inscrutable quality—in our minds it is emblazoned in stone. It becomes a fixed principle which we call "the law."

When I say that the law assumes a certain rigidity in our minds, I mean, of course, that this is the prevailing public opinion of law. If we are to believe one recent law review article, this public opinion of the law is shared by social workers, and in fact, the view of law as rigid and inflexible may be even *stronger* among social workers. In addition, this opinion among social workers has prevailed for a number of years.[1]

[1] J. Douglas Cook and L. Cook, "The Lawyer and Social Worker—Compatible Conflict," Buffalo Law Review, June, 1963, pp. 415–416.

The Solomon of today is very likely to have a social worker's report to review prior to decision; the legislator of today may well have his Neil Brock to suggest the content of legislation; and with the advent of the professionally trained social worker administrator, many rules and regulations, particularly in the broad field of social welfare, are written by social workers, or social workers in conjunction with others. So, with this increasing participation in the legal process, how do we explain the unchanging view of the law by social workers?

For one thing, it suggests to me that there has been very little real communication between the professions. It suggests that although it is accurate for me to say that social workers are visible on the scene at various points in the legal process, there is really very little *real participation* by social workers in the process.

There may be some among you who fail to see any reason for what I refer to as real participation. What I have been suggesting is that regardless of whether employed by a public or private agency, the social worker today works within a framework of law. He works within a framework where the rules are made in a different forum, according to different professional ideas, and are interpreted by an umpire trained in a different profession, following principles formulated in a different way, according to a different discipline.

If these observations are correct, then it would seem to be reasonable and logical to say that social workers need to know about law in order to operate effectively in those areas mentioned. If the additional point is made, and in my opinion it is a vital point frequently overlooked, that in each of these common areas of activity for social workers, the final decision—the ultimate decision is made "according to the law," then it seems to me to be essential that the social worker have a thorough knowledge of law. A knowledge that is not confined to a few rules learned by rote, but a knowledge of the modes of legal analysis.

Up to this point we have been considering the assignment from a broad, and some might say, a theoretical point of view.

Let us now move in for a closer examination of some common specific social work activities.

A State welfare department worker goes out to determine eligibility for assistance, and during the course of the interview assists the family to complete the financial statement. The social worker sees himself as capably performing his role by helping the potential recipient family to properly qualify.

Every question, or nearly every question on the financial statement, is a legal question. When the social worker advises, or even discusses, the questions and answers, he may very likely be giving legal advice. Now I'm not suggesting that this interview must be conducted by a lawyer—what I am suggesting is that the worker had better know what he is talking about!

I have been informed that in the situation just described a department worker in the course of completing the interview suggested a transfer of property which subsequently required some costly and protracted litigation to correct.

In a similar situation, another worker being mindful that a transfer of property might be deemed fraudulent when the transferor was receiving welfare aid, advised *against* a transfer—only this time the intended transfer was in compliance with a contract made years before. In this case no actual litigation resulted but threatened litigation, with all the attendant worry, anguish, and hard feelings, did result.

A third worker, like the second, had heard some smattering of law, and what he had heard was that when a husband and wife owned real estate jointly they each owned it entirely. So it appeared quite logical to him to show the full value of jointly held real estate on each individual's statement of assets. The fact that this disqualified the parties from assistance was blamed on "the law."

These examples and those which follow are not offered, nor are they to be read, as criticisms of the social work profession. Equally, if not more, glaring examples of failure on the part of lawyers in social casework situations could be gathered without trouble; but that is not my assignment.

I have chosen these examples because they did arise in routine situations. Situations which may arise on any day for many practicing social workers. Yet these are simple situations, situations which would appear to present the lesser hazard, when compared to some of the much more complex situations with which social workers are currently involved. Before moving to a discussion of these, I would mention two more traditional activities of the social worker, which I think present a somewhat greater legal hazard.

Probably, the single most active field for social workers at the present time is the field of adoption. I will concede that the law governing adoptions in many States is murky at best. I will also concede that few lawyers have really turned their attention to learning about adoption law. Yet, to my mind this is not justification for a social worker, even though zealous in her desire to benefit a child or a family, to interpret the law to suit herself. You and I know this happens. You and I know of children placed without the proper right to do so. You and I know of workers who play the odds in this situation, calculating that it is a rare instance when the adoption is challenged, and even more rare when the challenge is carried forward to ultimate appeal. Yet, it is at the time of these very appeals that we hear the great weeping, and wailing, and gnashing of teeth on the part of the social work profession, because of the unfeeling rigidity of the law which results in upsetting such a "finely planned" placement.

The hazards, the potential danger and anguish in adoption placements which are made without sound legal advice are too much apparent to require elucidation here. Adoption is a legal status—the steps to it are a legal process—certainly the reasons are persuasive for careful *legal* planning, as well as social planning! If the human factors are not controlling, consider the económic ones. Recently a highly regarded agency told me, with some pride, that it invested something in excess of $400 worth of professional talent in every adoption. Yet, at no time did the agency consult a lawyer unless attacked. Is it sound business to invest $400 of scarce professional talent in something where the legal security is unknown? I think not.

The second of the two traditional activities which I had in mind is that of marriage and family counseling. This is not to question the legitimacy of the activity. Many social workers are aware of the uneasiness, or outright hostility, evidenced by lawyers toward a caseworker counseling in a separated family situation. This should not be interpreted as distrust of the skill or competence of the worker, as a social worker. In my opinion, it is more likely that the lawyer is uneasy for fear of the legal implication which the caseworker may unconsciously create. Words such as "condonation," "recrimination," "reconciliation" are passing through the mind of the lawyer. Words which are shorthand for legal doctrines which may be inferred from circumstances then being set in motion by the advice of the social worker.

A moment ago I referred to the agency that only consults a lawyer when attacked. And that is precisely how it is viewed. When a lawyer enters a case the average social worker exhibits all of the trauma which would be evident from an actual physical assault.

Let me illustrate by a situation which has much in common with adoption, that of child custody—another area of traditional social worker interest. An agency had received two children from an ailing mother, and a release from her on her deathbed. With the release went a graphic description of the misdeeds of her husband, as well as an injunction to never give the children to "that man."

Some months later "that man" showed up. He was greeted with the reception that any mean, drunken bum should expect. He was coldly shown the door. As you might expect, a lawsuit resulted.

The agency reaction to the litigation is extremely pertinent to our discussion here today. Its professional integrity was being challenged; the professional judgment, skill, and responsibility of the workers involved were called in question by a scum who had no right to question anyone; and the attorney—the attorney was a scoundrel who had no regard for rights, or people, or children, or society—all he was interested in was the money.

While I have used strong words, I am confident that I have not overstated the reaction. Also, I am confident that this reaction is not atypical.

Given this kind of reaction—this view of the lawsuit as an affront to professional dignity and competence—you can, of course, predict what happened. The agency hired an attorney, but it sought to treat that lawyer to a vision of social work professionalism at its best. He was simply informed that all files, records, and information were "confidential," and could not be shared with him.

With reference to my specific assignment, which is to establish the "need," rather than the means, for *legal* understanding on the part of social workers, I shall try to put what I think I have said in another way. Many people, casually, or thoughtfully, or pointedly, refer to law as one of the social sciences; one of a group of sciences dealing with human society. There is implicit in such a definition the recognition that law is not the complete answer to all questions of human society. I suggest that there is also implicit an acknowledgement that for the law to work effectively, it must do so in harmony with the other social sciences. Such harmony is only possible if there is free movement and exchange of the data on which the hypotheses of the different social sciences are formulated. In my opinion social work, like law, is one of the most prominent of the applied social sciences. If there is to be harmonious application of the two sciences, there must be sufficient knowledge on the part of the practitioners of each, so that the implications for the other science are recognized.

We have then a three-fold reason for the need of social workers to acquire legal understanding:

1. So that in their application of their own science they are not inadvertently, or unconsciously, in disharmony with a complementary science; this we have illustrated with the examples of practice and of involvement in the making or interpretation of laws.

2. So that in the feedback of information through their own profession, the social work practitioner will influence the formulation of concepts by the social work academician and theoretician so that the concepts are tested against parallel concepts in the partner social science of law.

3. So that by means of feedback throughout the levels of the social work discipline, legal concepts which appear fallacious when examined in the light of proven social work theories may be discarded or modified.

Thus far I have argued in support of a need for legal understanding on the basis of the traditional activities of the social worker. It is important to note that these traditional activities have evolved during a period when social work generally accepted the premise of helping those who asked for help.

Now we are entering a new era when social work is resolutely turned toward the idea of "reaching out." Everywhere one reads or hears of the need for aggressive action on the part of the social worker—whether it be a casework, group work, or social action. New administrative arrangements are being devised to encourage aggressive action; such as the community action center fostered by the deliquency control and anti-poverty programs. Social workers are being urged to deal with causes, not effects; to grapple with social conditions and forces.

If this is to be the direction of social work we can anticipate that exposure to legal problems will be multiplied; that legal difficulties will be compounded. It is extremely naive to believe that a social worker can even attack problems of housing, of wages, of divorce, of criminal law, of consumer rights, in ignorance of the laws which operate in those fields. The result will only be defeat, discouragement, and despair. If the social worker cannot mount an attack without legal knowledge, he certainly cannot be effective. Legal knowledge and understanding is essential because, in many respects, the law or legal procedures, help to *sustain the very condition* which the social-action-oriented social worker is trying to change. Since the law is the conservative, sustaining force, the aggressive social worker may well be vulnerable to counterattack from the law. In this respect he needs sufficient legal knowledge for his own protection.

But, for today, we are not to dwell on the negative aspects. We are to hail the social worker in the crusade for a better world, and to encourage him in his endeavor. All the same, as a true friend we must caution him of the dangers ahead. And many of those dangers are *legal.*

We must tell him then of his need for legal understanding if he is to have a potential for success.

It seems very reasonable to advise that the social worker must have a good working knowledge of the law in the particular field in which he is assigned. If his work is to encompass improvements in housing conditions, he had better know the housing and zoning codes, and methods and procedures for their enforcements. He had better have a fundamental understanding of property rights. If he is to be involved in child welfare he had better understand parental and familial rights, and the procedures for their enforcement. He needs a good knowledge of the particular social welfare laws under which he and his organization are operating.

I am suggesting sufficient knowledge so that the social worker can recognize legal problems, not practice law. Certainly he or she should get competent legal advice before embarking on any course of action different from the established pattern.

This kind of knowledge or information is basic. Yet in my opinion it is not sufficent to operate successfully, or to meet the definition of my assignment—"legal understanding." True legal understanding for the social worker must include three additional ingredients:

1. An understanding of the legal profession in terms of its professional self-concept.

2. An understanding of the modes of legal reasoning and analysis.

3. An understanding of the adversary process and its basic theory of conflict.

The third point is one of the most difficult to attain, and yet probably the most important. It is difficult because it appears to be so foreign to accepted social work teaching.

My point is that a mere imparting of *legal information* about particular segments of law will be unsuccessful and may be dangerous. It is, in my opinion, necessary to impart a general understanding of jurisprudence, the function and limitations of the law in general, and a knowledge of certain basic concepts which prevail throughout the law; particularly of liberty and the function of government. In order to do this I believe certain basic ideas of procedure, of burden of proof, of evidence must be communicated to the social worker. Only then should an attempt be made to convey information about specific fields of law.

I would begin any course of training with some discussion of the professional self-image of each of the professions. It has been said that perhaps one reason for the hostility is that each profession sees itself as dedicated to the good of society and the protection of the individual.[2] Only by mutually understanding the professional self-image, do I believe the professionals can let down the bars to understanding.

Secondly, I would attempt to train the social worker to combat in conflict situations. Not "deal with" conflict, but to enter the lists and enter combat.

Only after this basic training would it seem appropriate to proceed to a course of training in the law. These fundamentals of law should then be followed by specific training in fields of law most relevant to common social worker activity. Here again, social workers should be introduced to conflict and the adversary process, and should be exposed to actual examination and cross-examination in a mock setting.

The emphasis on conflict and the adversary process might lead to a mistaken belief that I am supposing the social worker's participa-

[2] Andrew W. Watson, M.D. remarks at Juvenile Court Hearing Officers Training Program, Institute of Continuing Legal Education, Ann Arbor, Mich.

tion to be largely in litigation. This is not the case. As a lawyer in general practice I know that only 15–20 percent of my business actually came to litigation, and a much smaller percentage went through to the point of court decision. We could anticipate that the average social worker would be involved in less court action.

The emphasis on conflict stems from my conviction that the worker must be prepared for challenge, even though it may never come, and that many decisions of the worker in daily routine must be analyzed and made in a way that anticipates eventual test. It stems from my conviction that the activist social worker, the "new breed," is in many respects challenging the institution of law. It is extremely naive to expect concession and retreat. Preparation must be for combat. And since the combat must take place in the legal arena—preparation must be according to legal rules. Only if the worker feels free of fears and inhibitions about court involvement, can that worker make a reasonably sound presentation of his point of view. In order to be free of fear, the worker must have sufficient training and experience and understanding to be comfortable.

In my opinion, the law and society are the losers at the present time for lack of an adequate presentation of what social work has to offer, and this failure is mostly due to hesitancy on the part of the social worker to contribute forcefully.

The social worker whom we have described is also in many ways engaged in active pursuit of the ideals of the law. When the social worker attacks problems of housing, of consumer credit, of child custody, he is trying to assure the equal application of the law, and equal opportunity before the law. In this respect he is actively engaged on the very frontiers of the law in a manner in which the lawyer is seldom engaged. It is here that social work can be invaluable to the law, for it has a new perspective of the operation of law. Proper and adequate transmittal of this perspective to the legal profession is crucial to enable lawyers to create new laws and procedures better adapted to the real needs of the people. However, unless the social worker has some legal understanding, he will never be heard. For if he is to be heard in a meaningful way, it must be in the court room where the law is interpreted and applied. It is here that the case law is made. It is not in the statutes, or the rules, or the lecture hall but in the daily development of case law that the law has meaning for people.

Specific Technique for Providing Social Workers with Legal Perspective

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The major obstacle which one faces in trying to provide social workers with legal perspective is the complete breakdown in communication which exists between the legal and social work professions. Probably in no other area of law is there a greater gulf in communication and certainly in no other area of law has this gulf created greater mischief.

The communication breakdown is due largely to the lawyer's insistence on thinking of the legal system purely on an adversary, someone-must-be-victorious basis and the social worker's failure to grasp what the implications of an adversary system are. In this shortsighted failure of both the lawyer and the social worker to see the advantages and disadvantages of the adversary system lies the core of our problem. Any specific techniques providing social workers with legal perspective must take into account this basic problem.

The law has been defined by a legal scholar as a set of enforceable rules of conduct promulgated by public authority and applying equally to all members of the group. Such a definition means very little unless the social worker is taught that law is basically a reasonable adjustment of society to social needs and that as these social needs change, the law must change. The social worker must begin to understand that the law is not a static, definite set of rules and regulations, but an ever-changing and adapting process. Both the lawyer and social worker must realize that if the law does not adapt, it dies.

As lawyers we are trained and brought into the legal world to believe that one man has to win and another man has to lose. This is the adversary system. Our law is based on the premise that from

strife emerges truth. What always hovers over the law is the threat of litigation. All negotiations, all settlements, and all discussions are always conducted under the velvet fist of litigation if things break down. And litigation means that one must win and one must lose.

The social worker, on the other hand, is not trained in the belief that one side must always win and the other lose. Many times he sees a broader social good at the expense of the individual's right.

The solution to this "communication gap" is to delineate what the proper role of the lawyer is and what the proper role of the social worker is. Is the ideal lawyer a sort of modern day Perry Mason, never losing, always winning, always on the side of truth and justice? Is the role of the modern social worker to, like Ann Sheridan, save John Garfield? Or is it the little old spinster whose "proper" role is to take a turkey and food basket to the poor on Thanksgiving? Until we delineate the roles of the social worker and the lawyer, there will continue to be communication problems between the two.

Many lawyers have expressed to me the quaint notion that three groups should be stamped out in this country: dope peddlers, pornographers, and social workers. Sometimes the order is reversed, depending on how recently the lawyer has had any relations with social workers. A serious result of this feeling has been the unjustified refusal to extend the protection of privileged communication to social worker-client relatonships.

The communication breakdown is further aggravated by the legal training of most lawyers in practice today. Most lawyers who deal with social workers went to law school in the 1920's or 1930's, and to night law schools at that. They are not the cream of the bar; they are not those with the large corporate firms, the graduates of the top law schools. The lawyer who deals with the poor and is thus drawn into working with social workers, is the lawyer who practices in on office over the five-and-ten, and thinks social work is a nice profession to keep little old ladies off the street at night—or perhaps on the street!

In addition to the distorted bias this type of lawyer has for the social worker must be added the natural jealousy of the lawyer whose prerogatives and fields of action have steadily shrunk and will continue to shrink in the social welfare area.

This is a problem and a very real one indeed which must be dealt with in the law schools of America. It is a problem which cannot be dealt with in the traditional case framework of our law schools which is geared on an adversary basis.

The adversary system has advantages and disadvantages. The main advantage is that, being a common law system, the majority of our laws are nonstatutory and can be changed. We have all noted that the Supreme Court of the United States is moving faster in many

areas of social concern than Congress and the State legislatures. Therefore, the common law is particularly adaptable to changing times.

In addition, the adversary system is designed to ensure that the rights of both parties are fully protected. The lawyer is trained to always put the interest of his client first whenever this is ethically possible.

However, the adversary system has glaring weaknesses. First, this system is based on the premise that everyone can afford basically equal advocates of equal ability. Manifestly, this is an absurdity in our present society. The rich and the poor cannot afford counsel of equal ability and, in most cases, the poor cannot even afford counsel of any ability. The law is not a blind maiden dispensing equal justice—the adversary system makes it weighted in favor of the rich, the entrenched, and the establishment.

More importantly, the great social problems of modern times are not adapted to an adversary system. Domestic relations is not basically an adversary proceeding. The great goal of our time seems to be a civilized divorce. This means that no one should really be mad at anyone else, but just that an experiment in togetherness has failed. We are not interested in strife nor are we interested in truth in the domestic relations field. The great battles in this field are fought over who gets the Thunderbird and what about the summer cottage. The children, if considered at all by the parents, are usually used as a negotiating wedge.

How does the adversary system work in a divorce action? Well, frankly, it does not work. Who is there to protect the children? Who is there to protect the interests of society? Since there is really no adversary footing on the part of the parties, the safeguards built into the adversary system are nonexistent. Therefore, since it is impossible for this system to bring forth the truth in this setting, the law has had to move away from the traditional adversary system. Since we cannot rely on the parties themselves to bring forward all the facts, the court has had to devise other means to bring them out. Who becomes the substitute for the adversary system? The friend of the court, the social worker.

The juvenile court field is another example of the breakdown in the adversary system. As any of us who have spent any time in a juvenile court realize, the brilliant battles between legal titans occur less often than Halley's comet. The juvenile court deals largely with the poor. And, as I said before, the poor are largely unrepresented. The child's only hope that the truth will be brought out when he is before the juvenile court rests on the court worker, the social worker. Indeed, he is as much at the mercy of the whim of the social worker as an Aztec maiden before the high priest. Again, the adversary

system has failed miserably to bring forward the truth and to protect the rights of the individual. Again, we have had to turn to a substitute. Again, we have turned to the social worker.

What about welfare? Well, at one time it was quite simple. You herded them all into workhouses and you treated them like the animals they were for being poor. If Oliver Twist wanted more, you cuffed him. After all, in this best of all possible worlds, poverty meant evil. To treat the poor with respect was to tamper with divine justice. Besides, a little starvation never hurt anyone who was well fed.

In 1900, poverty was considered one of the essentials of the social system. Had President McKinley declared a war on poverty, they probably would have declared a war on President McKinley. Welfare was largely a problem for the church and the friendly local pastor. He would be sure that the poor received spiritual inspiration, assuring them that in the afterlife to come all would be made up to them if they were honest and sincere. If they were not, they deserved what they got anyway.

Thank God, one of the reasons for the war on poverty and our present concern is that we consider the poor to be human beings, American citizens who have the same rights as any other American citizens. But who is to represent them? Who is to see that their rights are protected? Obviously, we will never have enough legal counsel to go around to do this job. Again, the adversary system cannot provide the answer for us. Again, we must turn to the welfare worker, the social worker.

Again and again we have seen how the adversary system has failed to bring forth the facts which would enable the legal system to make an intelligent determination. Now, since the law is basically a determination of fact situations and since the adversary system cannot bring out these facts, we must turn to alternatives. The alternative has been, and will continue to be, the trained social worker.

Since the social worker is a lawyer-substitute, a sort of substitute for the adversary system, in other words, a one man factfinder, he must be made aware of the purpose of his role in the legal system. In addition, he must be aware of the safeguards we have built up over a period of 600 years to protect the rights of individuals in our factfinding process. And this is the rub. The social worker replaces the lawyer and then does not play by the lawyer's rules.

The social worker's training is too often not geared toward protecting the rights of the individual, but rather in bringing forward what he considers the real facts in a situation. Moreover, the social worker, due to his training, has a tendency to be a factfinder, judge, and jury all rolled together. The fine protections of the rules of evi-

dence and other safeguards of the Constitution and the adversary system mean little to him in his factfinding endeavors.

If the social worker is to replace the lawyer due to the inadequacies of the adversary system, he must understand the protections of the adversary system. He must avoid running a one-man kangaroo court in his own mind. These adversary system safeguards must be inherent in his own work. Therefore, we must teach social workers the basic framework of the adversary system—its functions, its role, and its safeguards.

We must teach the social worker the rules of evidence and why we have them. He must understand about hearsay. He must be able to frame his reports and conduct his investigations so that he is not subject to constant attack if and when he has to become a witness. Nothing probably leads to greater stress between the two professions than when the social worker takes the stand as a witness and his evidence is continually excluded for reasons he does not fathom.

In my course on "Legal Aspects of Social Work" I spend a great deal of time discussing the social worker as a witness. We go into the rules of evidence and the various constitutional safeguards. We discuss why they have been adopted and what their proper functions are. Never have I heard a social worker have the least resentment for these safeguards once he understands their role and reason for existing. Moreover, once a social worker understands the reasons for the rules, he can do his investigative work in such a fashion that, even while observing proper safeguards, he can perform his work effectively. If the social worker understands the basis of the rules and safeguards, he can operate effectively and accomplish the same social purposes within the legal framework while still protecting the rights of the individual.

The social worker must be taught to understand the lawyer's desire to win. It is very hard for someone not trained in the law to see two lawyers engaging in practically everything but hitting each other over the head with the kitchen sink and then having lunch together afterward. He must have an understanding of the lawyer's training, psychology, and desire to win, which the adversary system breeds.

Above all, the social worker must understand that, largely based on his reports and his determinations and the presentation of factual material, an individual's freedom can very well be taken away. A commitment proceeding does not simply result in helping the individual, but it also takes away his freedom, his right to live and act as he wishes. No matter how helpful it might be psychologically in juvenile court proceedings to have the parents sign neglect petitions against themselves, the practice is a legal abortion. Many times I have seen social workers do this solely with the treatment result in

mind, but the result is an absolute disregard of the constitutional right against self-incrimination which is taken away from the parents merely because they are too poor to afford counsel.

In addition, not only must the social worker understand the legal framework in which he is now replacing the lawyer and the adversary system, but he must also have a sufficiently generalized knowledge of the law so he can see legal problems and know when to advise his clients to seek legal advice. In providing legal training for social workers, I think it is imperative that the social worker be taught a broad, superficial knowledge of all areas of law, certainly not to practice or advise his clients on their legal rights, but to know when a legal problem exists and needs proper legal attention. In our present system the poor will not and cannot go to a lawyer when their rights are being trampled upon. The only person to whom he can turn in the power structure is the social worker. The social worker must know when and how to seek proper legal assistance for him.

Therefore, any system which attempts to provide training for social workers with a legal perspective must teach them about the adversary system which they are replacing in many areas; the functions and reasons for that system's being; the safeguards which are inherent in that system; how to perform their own work within these safeguards; the psychology of the lawyer; and how best to communicate with him; and a broad, generalized knowledge of the legal system. A large task—yes, but one that we must start performing!

Paths to Mutual Understanding and Cooperation

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This Conference on the Extension of Legal Services to the Poor marks a significant milestone in the continuing efforts of both the law and social work to marshal the resources of all the helping professions in an endeavor to secure for all who are in need access to those services, resources, and facilities without which life is an endless continuum of hopelessness, despondency, and despair.

It represents an effort to satisfy a maximum of individual human wants, in an orderly and effective manner, with due regard to the wants and needs of others and to the overriding demands of society as a whole. It seeks to do this within the context of the prevailing legal and social institutions, practices and procedures—albeit with a willingness to examine and test proposed new methods and patterns of organization and distribution of services.

In doing this, both the law and social work are seeking to achieve aims and objectives and to discharge functions and responsibilities which they share in common: to help man fulfill his potential, to find a rightful and purposeful place in society, and to contribute to the common good. At this level of abstraction, I am sure we would find no differences between us.

In the light of these common goals—to which both disciplines and their respective practitioners are professionally and personally committed—it is a perplexing paradox to note how little comprehension each has of the other's role and function in society, and the frame of reference, including the value system, within which each professional group fulfills its professional obligations; they know even less, I fear, of the processes—and their rationale.

Indeed both professions are victimized by stereotypes, the continuing perpetuation of which can only serve to further alien-

ate them from one another and consequently, to dilute their individual efforts to serve what is, in the final analysis, a common purpose.

It is imperative, therefore, if both the law and social work are to maximize their effectiveness and achieve optimum results, that a searching examination be made of the myths that plague us as well as the differences that divide us. This conference and this morning's session in particular, is perhaps a beginning, albeit a tentative, effort to do so.

But it is only a beginning and I would venture the hope that the dialogue which has begun here and in the National Conference of Lawyers and Social Workers, and in various communities throughout the country which have witnessed the organization of cooperative efforts between the local bar association and the local chapter of the National Association of Social Workers—will blossom into a full, frank, and honest examination of the reasons for the distance between us. It will begin to build the bridge to a better understanding and to cooperative efforts in respect to those matters in which we share a common interest and concern.

The contributions made by our panel speakers this morning reflect the analysis of knowledgeable persons who have been exposed to this paradox of which I speak and who have given it much constructive thought. In commenting on their observations, I want only to delineate some of the further areas which I believe merit continuing inquiry if we are to understand each other better and to find a basis for joint and complementary efforts to be of service.

First let me say that I believe both professions would take a great step forward if they had a greater understanding of the nature and dimension of the professional training that their respective practitioners undergo—their professional orientation if you will. What value systems guide their conduct and their practice? What meaning for example does the "rule of law" have for the lawyer—this "magical phrase" which, Professor Foster tells us, ". . . like the analagous phrases 'due process of law' and 'law of the land'—has the same Pavlovian effect on lawyers that the phrases 'human dignity' and 'social welfare' have on social workers?" [1]

I think that social workers, once they come to understand the political, the egalitarian concept if you will, of this procedural juridical principle, and the equal protection achieved by the application of the law to everyone, rich or poor, public official or ordinary citizen alike, will come to realize that this is truly one of the great social innovations of our political system and will gain real insight into why lawyers are adamant in their insistence on absolute adherence to these essential safeguards against whim and caprice and on their

[1] Henry H. Foster, Jr., Social Work, the Law, and Social Action, *Social Casework*, July 1964, vol. XLV, No. 7.

observance as "our main assurance that there will be equal justice under law."

Perhaps then too, social workers will be better able to comprehend how essential the adversary—or advocacy—function is to the lawyer who must at all times be committed to the fidelity of due process, and who, by reason of his lawyer-client relationship, must protect and further the rights and interests of his client, qualified only by the ethical imperatives of his profession.

Conversely, if lawyers knew the rigorous and comprehensive professional training regimen of the social worker—both didactic and fieldwork, his conscious exposure to the "smell of the tenements," and his early and passionate commitment to social justice for all disadvantaged persons, and to the ideal of a better tomorrow, and if the lawyers were also to fully grasp the implications of a professional service in which the beneficiary of the service is not exclusively the client of the professional practitioner but, in a sense, is rather the client of the social agency in and through which he practices his profession of social work, he will come to understand the social worker's dedication to the concept of social change and his impatience at the slowness of the law to respond to present needs.

One might say then that the lawyer's primary orientation is to his client—right or wrong, he will defend him to the death—while perhaps the social worker's concern is as much with the environment and with the possibility of its modifiability as it is with the client's particular and immediate problem.

It is only when you look further into the lawyer's orientation that you see another dimension of the law and the lawyer's responsibility in relation thereto—a dimension in respect to which the social worker has a direct and continuing interest and to the fulfillment of which he has an extremely important contribution to make.

I refer now to law viewed as an instrumentality for social administration. It has been said that "the law should be loved a little because it is felt to be just; feared a little because it is severe; hated a little because it is to a certain extent out of sympathy with the prevalent temper of the day; and respected because it is felt to be a necessity." In an increasingly complex society which is witness to a growing sense of commitment to meeting the needs of all of its citizens, it is clear that social workers have a profound contribution to make to the reshaping of society's institutions to achieve a greater measure of social justice for all.

Social workers, like all social and behavioral scientists and lawyers ". . . have long recognized that the law is concerned with, and is also in turn very deeply affecting, concepts of behavior and of society which these sciences are in the process of investigating . . ." [2] Efforts

[2] Samuel M. Fahr and Ralph H. Ojemann—The Use of Social and Behavioral Science Knowledge in Law, *Iowa Law Review*, Vol. 48, No. 1, Fall 1962, pp. 59–75.

to incorporate scientific findings in legal affairs have been reflected in the past in the areas of criminal law and family law primarily and, to some extent more recently, in adult commitment laws and procedures.

In their illuminating article in the Fall 1962, Iowa Law Review on "The Use of Social and Behavioral Science Knowledge in Law," Professors Fahr and Ojemann assert that "since law in the end always deals with human beings, there would seem to be almost no area in which the influence and findings of the social and behavioral sciences might not be used to explain and improve the law in its daily operation upon the members of our society."

It is in the application of these findings—to which social workers contribute so much—that there is potential for much misunderstanding and the feeling among many social workers that the law is too rigid, too inflexible, too resistant to change, too much the champion of the status quo. Here too, it seems to me, there is an opportunity for much constructive interchange between the two disciplines: an understanding by social workers, for example, as to the need for probable certainty with respect to predictability of human behavior based on observations and why the law cannot be rewritten to reflect knowledge based on behavior which is too variable, too vague, and too indefinite; a corresponding need on the part of lawyers to apply their knowledge of bureaucratic structure and legislative and administrative processes to reflect in law what social workers can demonstrate to a very great degree to be warranted by their objective findings.

In short, I am suggesting that, as social scientists, our responsibility extends beyond that of the recording and reporting of observable phenomena. For—as practitioners and as academicians—we share what Plato referred to as the social responsibility of knowledge—a responsibility which is translated into the imperative need to be—and to become—social architects.

On another dimension, on the level of day-to-day lawyer-social worker cooperative relationships, I think candor compels us to answer truthfully and completely the question as to the availability and accessibility of legal services to social agency clients. Is this real or is it illusory? If real, is it quality service or is it something that gets relegated to the lower rungs of the legal status ladder? And if it is good legal representation will it be solely of an adversary or advocacy nature or will it be designed to deal with the totality of the client's problem with the active participation of the social worker or other court adjunctive service?

These are some of the kinds of questions that go through the minds of social workers as they consider how best to use the law as an essential social resource in the resolution or amelioration of the problems faced by their agency's clients.

Without intending to suggest that they are at all inclusive, reference is made herewith to various other areas involving lawyer-social worker relationships—many of them alluded to at this conference—which would appear to merit further exploration in an effort to arrive at a process and rationale for cooperative action between the two disciplines:

1. *Review of administrative action and the exercise of administrative discretion, at all levels:* consideration of agency policies, practices, procedures, and regulations in relation to legally-authorized agency function and authority, and to objectively determined individual and community needs; the role of the lawyer in this respect; the role of the social worker in relation to the client and to the agency in which he is employed; the right—at least the moral, if not the legal right—of the client to representation by counsel and "due process."

2. *New potentials for delivering services:* dealing with the phenomena of fragmentation in providing social and legal services; organization at the neighborhood or district level; redistribution and/or restructuring of service mechanisms; the role of the private legal practitioner as well as the institutional legal structure; the process for determining the services needed and the relative priority of need; reaching-out and preventive legal services.

3. *Financing:* how to pay for the legal services to the indigent while retaining independence in policymaking and action; how to determine indigency and the various levels of indigency; allocation of resources in relation to realistically available resources.

4. *Social action, social change, and social legislation:* lawyers and social workers working in concert with one another and with other community forces.

By and large, social workers do not wish to become lawyer-substitutes nor do lawyers wish to assume the functions of the professionally trained social worker. It seems to me that both professions are faced with the need to do both an internal as well as an interdisciplinary training job if each is to achieve the kind of mutual understanding and competence, essential to a proper discharge of its own responsibility, and to a wholesome respect for the role and responsibility of the other.

This kind of training should probably be both formal and informal; should be built into the professional educational system, both graduate and continuing; should be sufficiently flexible to respond to changing needs and requirements; should be reflected in the value system and should become an integral part of the practitioner's conscious recognition and acknowledgement of his professional obligations and responsibilities. This is no less true of the social worker in relation to his understanding of the fundamental constitutional and legal rights of the individual as it is of the lawyer and his developing realization of his public service obligations.

The kind of training to which I refer goes beyond what Galbraith termed "conventional wisdom," i.e., knowledge related to an earlier age but not to our own. For conventional wisdom is not equal to the task which the future holds for us. To deal most effectively with the reality of what lies ahead will require, I suggest, that we approximate more closely Hegel's interest in "what is ripe for development" than Aristotle's respect for the "experience of ages."

To do this requires not only a more comprehensive and more integrated training program but also expanded recruitment efforts, training institutions, and faculty. The schools of social work are only turning out around 3,000 graduates each year—just about enough to replace social workers who leave the field because of retirement, death, or family responsibility, and thus constituting no net addition to the corps of professionally trained social workers—and this at a time when the estimated annual demand, to the extent that it can be measured, is for a net annual addition of 10,000 social workers. The schools would have to more than quadruple their annual number of graduates and keep it up for a decade before we could begin to fill presently existing jobs for which professional personnel are—or should be—required.

I suspect the same is true of the legal profession although I am not currently informed as to the supply and demand factors. It is somewhat incongruous, therefore, to think of social workers and lawyers consciously wishing to poach upon one another's preserves. I think we do better to concentrate on means of increasing the number and quality of practitioners in both fields—practitioners disciplined to understand and respect the contribution which each has to make in a cause which, in so many respects, is of mutual interest and concern. I suggest that progress lies in that direction, and that it is incumbent upon both professions to move ahead vigorously, creatively—and, above all, quickly.

SUMMARY OF DISCUSSION

The Lawyer and the Social Worker

The workshop discussion began with frankly expressed criticisms of both the social work and the legal professions. One statement: the thrust of change takes expression through social work; the social worker knows the background, sees the need for change and is impatient for it; this gives rise to a continuing conflict with the law, which is rigid and inflexible, and with lawyers, who do not know the background and are the obstacles to change. Another statement: lawyers used to be conservative, and social workers action minded. A third view: there are rigidities and intransigeance in each group; both disciplines are quite conservative and both need loosening up. and a fourth: social welfare for the poor has been supplanted by social justice for the poor, and lawyers have a part to play; the disciplines of law and social work must supplement and complement each other.

The Lawyer in the Juvenile Courts

The air having thus been cleared, the group turned to the juvenile courts as an example of the interplay of law and social work. According to some of the conferees, the juvenile courts embodied new social work ideas, and originally, in some jurisdictions, lawyers were largely or wholly excluded. The court, with social work and probational staff as an adjunct—a lawyer substitute—undertook to rehabilitate the youngsters. In the name of treatment, rights were violated, and now the lawyers and legal rights have reappeared. In this respect, the lawyers have been the instruments of change. A sociolegal solution has been developing, coalescing social aims and constiutional rights.

The doctrine of parens patriae may allow the legislature to enact a juvenile court law, but such a doctrine has no place in the court procedure. This should be governed by the provisions of the statute and pertinent court decisions. The lawyer performs his usual func-

tion, representing clients in individual cases, with resultant court decisions and legal adjustments. The lawyer, too, makes adjustments, adapting his action to the setting. While, in a criminal proceeding, he might advise his client to say nothing, he would play by the rules of the juvenile court, and would act on the basis of what he knows about the court, its facilities, the child, and the case.

The Role of the Lawyer in Social Change

More broadly, then, the discussants agreed that social change comes through legal adjustments, and the court case is often the vehicle. The decisions of the U.S. Supreme Court over the last 10 years or so include many significant examples. Even statutory provisions have little meaning until they are interpreted by the courts. Accordingly, if the social work profession wishes social change, it needs the lawyer to get it. The social worker needs to know about the law, and how it works, and how to work with it.

It was emphasized that the lawyer, as an instrument of social change, would be exercising his professional skills in individual cases, representing clients, usually in an adversary context. The social worker can seek social change, can make a judgment of the social objective to be sought, and the lawyer can use his technical skills in attempting to achieve it.

Social workers sometimes blame lawyers for the law. But statutes are the product of the legislature, of society. The lawyer uses his professional tools in the light of the statutes. He is not a defender of the status quo, but must consider the existing statutes and decisions, and he is often called upon to protect rights of individuals during change.

It was suggested that lawyers, individually, through bar associations, and as legislators, should take a more active part in seeking legislation that will promote social justice. There was answering comment that this is not the function of lawyers. As legislators, they are not acting as lawyers. In general, lawyers who seek legislative improvements are acting as citizens, rather than professionally.

Obtaining the Services of Lawyers

Accepting the premise that legal services for the poor are necessary—to meet the needs of individuals, to bring about social change, and to satisfy our society's evolving sense of social justice—the group considered how such services might be provided. There was a clear consensus that the indispensable ingredient for obtaining legal services of good quality and in sufficient quantity is to pay for them. It was also agreed that, since essential needs of our society are involved, society has an obligation to underwrite the provision of the services.

The group did not reach any conclusion as to the specific orga-

nizations or institutions which should be established or used for this purpose, but several possibilities were discussed. Legal services units would be the most direct mechanism. The public-defender system is a precedent and, as extended to meeting the overall needs of the poor for legal services, could have continuing community support, freedom from pressures, and full-time career lawyers. Comparable organizations might also be achieved through a broadening of legal aid activity and support.

Public welfare agencies were mentioned as another potential source of support for legal services for the poor, but there would be difficulties. Agency staff lawyers could not be expected to have enough independence to do the job properly, particularly against the agency itself and other public bodies. Payments by public welfare agencies to lawyers in private practice for services to welfare clients qualify for Federal matching, under existing law governing the public assistance programs, only as assistance expenditures (not under the more favorable formulae for administrative expenditures), and only if included in the money payment to the beneficiary (not if paid directly to the lawyer).

In general, methods that would provide fees for lawyers in private practice are extremely desirable, since they would involve the mainstream of legal activity, thus promoting adequate services by competent personnel, and building within the profession an awareness and interest regarding problems of the poor. In one State, a claimant for unemployment compensation may retain counsel on a contingent fee basis. Workmen's compensation awards often include an attorney's fee. The participation of lawyers in this type of case greatly influences administration of the program. Possibly, through statutory change if necessary, similar devices may be evolved in other programs and in other jurisdictions.

If there are opportunities for lawyers in furnishing legal services to the poor, changes in law school curricula and in the training of lawyers will automatically follow. Supply will result from demand and opportunity, both as to the type of lawyer—generalists—and their location—in the communities and the community organizations.

Advice by the Lawyer and the Social Worker

It was noted that the poor often require legal advice and consultation—services beyond the type of legal representation required by "the middle class." Such services would perhaps be better furnished by full-time, career staff than by private practitioners.

This raised the question of what kind of advice lawyers should give, and what kind of advice social workers should give, with the answer that both professions should do their own jobs. By and large, social workers don't want to get into legal work; they're in short supply

and have other things to do. Lawyers, in counseling, sometimes cross the line of their distinctive professional activity. Insofar as cases involving the poor are referred to lawyers by social workers, the solution is for the social worker to know when a lawyer is needed.

At all levels, much more attention must be given to getting the two professions to work together. In addition to the activities of the National Conference of Lawyers and Social Workers, specific institutes are useful. Other devices must be developed to promote greater communication and understanding.

The Lawyer and the Public Welfare Administrator

The relationship of the lawyer and the public welfare administrator is particularly crucial and sensitive, according to the conferees. The administrator needs continuing advice on the law governing his program in relation to agency policies, the rights of clients, and evaluation of administration. He also needs help in formulating and obtaining needed changes in the law.

Legal Services for Private Social Agencies

The discussion brought out that private social agencies have a special problem. They, too, need legal services for protecting clients, clarifying lines of responsibility, and interpreting relevant law. However, most agencies don't need "house" counsel, and use private practitioners. The prevalent fee system then becomes a barrier to agency use of the lawyer. More use of a retainer arrangement might be a solution.

The "New" Legal Services to the Poor v. *the "Old"*

In counterpoint to the consideration of expanded legal services, new methods, and evolving relationships, there were intermittent reminders from some conferees that the more traditional services and methods should not be lost sight of. There are 249 legal aid societies and 135 voluntary committees in the United States, receiving significant support from bar associations, and serving the poor in thousands of cases. Private attorneys, appointed by the courts, represent indigent criminal defendants, sometimes at great financial sacrifice. Public defender organizations have more than they can handle as a result of the Gideon decision. We should let our law schools concentrate on training lawyers—not social workers or investigators—and let our lawyers concentrate on adversary skills. We should not be critical of lawyers who are trying to do a professional job with dignity. In short, there is enough to do in furnishing the existing types of legal services to the poor through existing organizations and methods. One speaker saw a need for lawyers to pinpoint inequities, but stated that there should not be an attempt to give every poor person an indifferent lawyer. While all this had little to do with the relationship of the lawyer and the social worker, a summary of the discussion would be incomplete without it.

PANEL V

The Role of the Law Schools in the Extension of Legal Services

INTRODUCTION

The type of education which the lawyer receives in law school influences him profoundly throughout his career. Traditionally, the law school curriculum has emphasized those areas of law which affect the worlds of commerce and investment—contracts, property, torts, securities, and more recently, labor relations. Little time is devoted to those areas on which the average practising lawyer may only touch peripherally largely, it might be assumed, because they are unremunerative. This includes criminal law and family law. As the discussions in the conference indicate, this is not because there is very little crime, desertion, or divorce in the United States, but rather it is because a large percentage of persons with these problems are too poor to afford attorneys.

Even in the more traditional subject matter, where rich and poor alike have legal problems, the present emphasis often fails to consider the rights and remedies of the propertyless, the unemployed, the indigent. Beyond this, the study of administrative process is at present a study of the regulation by Government agencies of private enterprise with its concomitant obligations and protections against infringement. And yet the lives of many persons who do not have the means to engage in such activity are daily affected by administrative agencies who also have a responsibility not to infringe on individual liberties.

It was generally agreed by the discussants that if these imbalances are to be redressed, it will be largely through reform of the curricula as well as the basic orientation of the Nation's law schools.

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If law students of the future are to acquire attitudes and habits of thought which will enable them to view all areas of law as equally worthy of study and all clients as equally worthy of representation, then the concept of equal justice must be taught as a living force rather than as a platitude to which mere lip service is paid.

The Boston University Law School Student Program

Robert L. Spangenberg
Director, Legal Studies Institute
Boston University School of Law

The Dean and faculty of Boston University School of Law have for many years been interested in the dual problems of transitional education for the student about to leave the academic world and of the serious legal needs of indigent citizens in the community.

It seemed logical that these problems might have a common solution, and thus for the past 3 years students from the Law School have engaged in a modest voluntary defender program in the Boston Municipal Court under the general supervision of members of the Massachusetts bar. Students have been allowed to participate in the trial of minor offenses under rule 11 of the Massachusetts Supreme Judicial Court. The rule provides as follows:

> *A senior student in an accredited law school in the Commonwealth, with the written approval of the dean of said school of his character, legal ability, and special training, may appear without compensation on behalf of an indigent defendant in any District Court, provided that the conduct of the case is under the general supervision of a member of the bar of the Commonwealth assigned by a court or employed by a recognized legal aid society or voluntary defender committee to represent an indigent defendant in a criminal case as a matter of charity. . . . The expression "general supervision" in this rule shall not be construed to require the personal attendance in court of the supervising member of the bar.*

There has, of course, been a certain amount of controversy for many years over whether the law schools are the proper place for such practical training. There are those who maintain that a student becomes too involved with his trial work when it is assigned during the course of a regular academic year, with the result that his general legal education suffers. But the need for some sort of clinical training

for young law students cannot be over-emphasized. The profession is now so institutionalized that a student has little or no opportunity for practical trial experience prior to his admission to the bar. In the field of criminal law particularly, it is essential that a young lawyer know what he is about before he steps into the courtroom, for the liberty of his client is too precious a commodity to be squandered through the mistakes of inexperience.

One is reminded of the famous quote found in Coke's Book of Entries:

No man can be a compleat Lawyer by universality of knowledge without experience in particular Cases, nor by bare experience without universality of knowledge; he must be both speculative and active, for the science of laws, I assure you, must joyn hands with experience.

The Boston University Defender project is designed to add the element of experience to that "universality of knowledge" a student will hopefully absorb during his 3 years of academic concentration on the law.

Compared with its predecessor program in the Boston Municipal Court, the present project is vastly enlarged and strengthened in terms of content, organization, and degree of student participation. It will benefit immensely from our previous experience in the Boston Municipal Court, but it is designed to provide a far more comprehensive and meaningful experience for the student—as well as expanded service for the criminal defendant. Entitled the Boston University Roxbury Defender Project, it has been set up to operate solely on the criminal side of Boston's Roxbury District Court.

Roxbury is one of Boston's 4 major communities with a population of approximately 85,000. Once a middle-class suburb, its homes, many of them designed for single-family use, were, for the most part, built at or before the turn of the century.

An increase in population density has been accompanied by a change from middle-income to predominantly lower-income population in much of the area.

A study made in 1960 showed almost 5,500 families with an income under $3,000 per year and over 1,100 families with an income less than $1,000 per year. More than 40 percent of the adult residents had not gone beyond elementary school. One-third of the children had only one parent living at home. The 1960 census figures list the Negro population of Roxbury as slightly over 36,800 persons. This figure represented nearly 30 percent of the Negro population of the Commonwealth and nearly 60 percent of the Negro population of Boston.

It is an area where domestic relations, debt, landlord-tenant, and criminal cases are numerous and where low income and lack of education leave the average resident at a disadvantage in coping with

the law. There are over 30,000 criminal complaints filed in the Roxbury District Court each year. Presiding Justice Elwood S. McKenney estimates that in excess of 70 percent of these defendants are not represented by legal counsel.

The implications of this situation in Roxbury are clear in view of the U.S. Supreme Court's decision last year in Gideon v. Wainwright; even if it should turn out that the letter of the decision is not always being violated by a failure to provide counsel in so many criminal cases, its spirit certainly is. As a direct result of the Gideon case, Judge Kenneth L. Nash, Chairman of the administrative committee of the district courts of Massachusetts, issued a directive last February to all district court judges that a determination be made of the defendant's possible indigency in every criminal case. If he is found indigent and without an attorney, he is to be informed of his right to have counsel appointed for him, and then asked whether he wishes appointed counsel or waives his right to it. If he requests legal assistance, the Massachusetts defenders committee is notified and asked to provide counsel. In practice, this directive cannot produce a solution to the problem of representation for indigent defendants simply because of the demands it makes on the limited staff and resources of the defenders committee.

In addition, Rule 10 of the Massachusetts Supreme Judicial Court concerning the assignment of counsel in noncapital cases was amended this summer to read as follows:

If a defendant charged with a crime, for which a sentence of imprisonment may be imposed, *appears in any court without counsel, the judge shall advise him of his right to counsel and assign counsel to represent him at every stage of the proceeding unless he elects to proceed without counsel or is able to obtain counsel. Before assigning counsel, the judge shall interrogate the defendant and shall satisfy himself that the defendant is unable to produce counsel.* . . . [Emphasis added.]

It thus appears that the assignment of counsel for the indigent defendant is mandatory in the district courts of Massachusetts in all cases where a jail sentence can be imposed, unless the defendant makes a competent waiver of his rights. This will necessitate a drastic change in current facilities to meet the projected need, particularly in Roxbury with its high percentage of indigent accused.

It is only natural then that Boston University School of Law is proud of its role in the unified legal service program designed by Action for Boston Community Development, Inc. for implementation in the Roxbury district. The model defender project for Suffolk County has previously been described to you by my good friend Bill Wells of ABCD. Basically, the National Legal Aid and Defender Association has provided funds for the representation of indigent de-

fendants in the district courts of Suffolk County by the Massachusetts defender's committee and in the Roxbury District Court by students of Boston Univerity School of Law.

Under the proposed plan, two attorneys on the staff of the Massachusetts defender's committee will be permanently assigned to the Roxbury Court to represent indigent defendants in probable cause hearings, felonies over which the court takes jurisdiction, and certain serious misdemeanors. The students of Boston University will in turn handle all other cases involving misdemeanors.

Basically, the Boston University defender's project involves a three-credit course for 30 selected students to be given over the length of the school year, dealing initially with lectures on criminal trial preparation, procedure, practice, evidence, examination, disposition, sentencing, and probation. The course is being taught by a full-time faculty member and in addition, lectures are being given by judges, court officials, and eminent criminal trial attorneys who will discuss problems in their fields of expertise. Special attention will be given to ethical problems relating to trial practice.

At the conclusion of the initial lectures, the class will be divided into teams of two for actual trial work under the direct supervision of Attorney James W. Bailey who has had 16 years of experience dealing exclusively with the practical problems of criminal law. Mr. Bailey will be a full-time member of our staff and will appear as attorney of record in each case assigned to the students.

At the time of arraignment, the court will determine whether or not a defendant is indigent. If he is in fact found to be indigent and if the case involves a less serious misdemeanor, the defendant will be given the opportunity to elect a student to represent him under the supervision of Mr. Bailey. The case will then be continued for 1 week during which time the students will consult with Mr. Bailey and prepare the defense for the accused. They will examine the pleadings, prepare necessary pleas, and investigate the facts fully, including an interview with the defendant and all material witnesses. Prior to the actual trial, the case will be fully discussed with Mr. Bailey and the necessary preparations made. At the time of trial, Mr. Bailey will be present in court at all times to protect the rights of the defendant.

After final disposition of a case, the individual justice involved and the supervising attorney will sit down with the student who tried the case and together they will assess the strengths and weaknesses of the student's performance.

As the student progresses with the handling of his cases, he will be assigned more serious offenses for representation, but his development will be solely according to his own ability and enthusiasm.

During the second semester, a course will be given by Professor Henry Monaghan on advanced problems in criminal procedure. Em-

phasis will be placed on the constitutional problems relating to the practice of criminal law.

Arrangements have also been made for visits to the Deer Island House of Correction, the Youth Service Board Detention Center in Mattapan, and the Concord Reformatory.

It is also our purpose to acquaint the students with particular needs that might arise as a result of an individual's involvement with the law. There may be particular environmental or social welfare problems which have led a person to his involvement with the law. Little attention has been given by the legal profession to the matter of interdisciplinary communication. A primary objective of ABCD in the development of the demonstration project is the institution of a total approach to a complex of problems in a given case, through use of resources in a coherent, coordinated manner. We will, therefore, attempt to investigate and understand these problems and, through Mr. Bailey, refer such cases to the appropriate agency involved in the unified legal service program.

In truth, one serious problem has been presented to us in developing this project. There are those who feel quite strongly that a student does not qualify as counsel under the decisions of the U.S. Supreme Court, while others feel that a student is incapable of adequately representing defendants. This problem is one that we will explore during the period of this grant, but our experiences in the Boston Municipal Court during the past 3 years have been extremely well received not only by those that we have represented, but also by the individual justices involved in the trial of cases.

In conclusion I might state that a project such as this one can succeed only to the extent that it has the full cooperation of the judiciary. We are extremely fortunate in having the unqualified and enthusiastic support of both Presiding Justices Elwood S. McKenney and Charles I. Taylor, and the other judges of the Roxbury District Court. Judge McKenney's cooperation and approval in the formulation of this program have been an invaluable—and indispensable—asset. Not only has he worked closely with us in preparing the project, but he has been most generous in offering us complete access to court records, probation reports, and courtroom facilities. The cooperation of all the judges of the Roxbury District Court is also appreciated inasmuch as they are extremely busy holding at least two criminal sessions during every court day of the year. Chief Justice G. Joseph Tauro of the Massachusetts Superior Court has also given his strong support to the project.

Our overall objective is to carry out at least to some small degree Mr. Justice Tom C. Clark's hope that we can handle a great part of the indigent problem through the four-part framework built around the judge, the practitioner, the teacher, and the student. In so doing,

we feel that we will be helping Massachusetts to measure up to the basic standards promulgated by the National Legal Aid and Defender Association, and adopted by the New England Defender Conference in 1963. When the contribution to be made by the Boston University Defender's program is measured in the light of those standards, and when the benefits of actual courtroom experience to our students are considered, it is hoped that we will be complying with the spirit of the Gideon decision, and in addition, we will be answering the urgent additional need of our law school students for a clinical approach to the law school curriculum.

The Georgetown Intern Program: Possibilities of Graduate Programs Keyed To the Civil Needs of the Poor

Dean Kenneth Pye
University of Georgetown Law Center

The decade of the 1950's witnessed a substantial increase in the number of indigents accused of crime and a consequent heightened demand for assigned counsel in the courts of the District of Columbia. In 1958 the District of Columbia Court of General Sessions relied on assigned counsel to represent 4,500 indigents accused of misdemeanors. An additional 1,000 indigents accused of felonies came before the U.S. District Court in need of counsel. Much of the responsibility for the defense inevitably was assigned to younger members of the bar, many of whom were engaged in specialized administrative practices. These lawyers were largely dependent on their law school training for the professional skills demanded of them as defense counsel. Frequently their only association with criminal law was as a student in a 3-hour course in crimes in the first year of law school several years previously.

With these problems in mind Oliver Gasch, then U.S. Attorney for the District of Columbia, proposed to the law schools of Washington that a legal internship program be established for recent graduates. In the summer of 1959 Mr. Gasch's proposal was implemented by Dean Paul R. Dean of Georgetown who laid the groundwork for the establishment of the legal internship program.

The program is now entering its fifth year. Forty-one Prettyman Fellows have been selected from approximately 400 applicants from more than 60 schools. The fellows have come from 21 States and 25 law schools.

The course of study involves 11 months of residence at the law center. The degree of master of laws is awarded at the end of the year. The program of study can be divided into four phases: the

orientation period, training in the courtroom, coursework in the classroom, and preparation of the legal research assignment.

From the beginning of the program it was clear that most of the clinical experience would be gained in criminal cases because of the pressing need for counsel in these cases and the concomitant availability of cases. The internship program has always been available to undertake civil cases. However, few requests have been made of us by the Legal Aid Society of the District of Columbia.

Because of the emphasis on criminal cases, the orientation period has been directed primarily towards preparing the interns in the law of evidence, criminal procedure, and the policies and practices of our local criminal courts.

Approximately 100 class hours are devoted to an intensive review of these subjects, the practical and ethical problems facing a defense counsel in criminal prosecutions and the operation of the various agencies concerned with the administration of criminal justice in the District of Columbia. This work is conducted in seminars with the director of the program. Extensive use is made of visits to the courts, the jail, mental hospitals, the police department, the Office of the U.S. Attorney, and similar institutions. Detailed instruction is provided in the techniques of using prior inconsistent statements and records of prior convictions for impeachment. The proper foundation necessary to elicit character testimony, the rehabilitation of character witnesses, use of medical texts in the cross-examination of psychiatrists, obtaining prior statements under the Jencks Act, and similar matters are stressed. Services of other members of the faculty are utilized in fields of their special expertise. We are fortunate in having the Director of the Judicial Conference Study of Mental Competency and the Director of the District of Columbia Bail Project as members of our faculty. In addition the former Director of the program, now in private practice, and the Deputy Director of the Legal Aid Agency, Mr. Bellow, give generously of their time in the instruction of the interns.

We appreciate that these young attorneys will lack substantial experience. We must compensate by providing them with greater expertise than the usual lawyer possesses when he enters the criminal courtroom. During recent years the orientation program has benefited from materials prepared by earlier groups of interns.

About November 15 the interns begin representing indigents in the District of Columbia Court of General Sessions. Two interns are usually present each day in the Court of General Sessions to accept assignments in the U.S. division of that court where counsel is needed to represent indigents charged with misdemeanors or in preliminary hearings of felony cases. About January 1 the interns begin to accept assignments in felony cases in the U.S. District Court for the District

of Columbia. During the last year approximately 16 percent of the total number of felony defendants were represented by interns.

In the representation of indigents in the courts, the interns operate under the personal supervision of the Director and in close coordination with the Legal Aid Agency of the District of Columbia. The Legal Aid Agency attorneys and interns engage in regular staff meetings in order to keep abreast with recent developments in the law and in order to improve the quality of the representation provided to indigents.

The caseload of each intern varies depending on his ability and the need for counsel. Each intern represents between 20 and 40 clients during the year. Precautions are taken to keep the caseload low in order to insure that each attorney will have adequate time to devote to his cases. In addition to criminal cases, interns have been appointed to a number of "quasi-criminal" cases ranging from petitions for habeas corpus to actions under the Civil Rights Act for interference with prisoners' mail.

A substantial number of defendants who have been incarcerated as a result of criminal convictions write to the program each year asking that an intern be assigned to undertake their representation. Thus far the program has followed the self-imposed policy of never accepting a case in the absence of a specific assignment by a judge.

In addition to their seminars in criminal procedure and their work in the court each intern is required to successfully complete 10 hours of course work during the evening in our graduate division, which is a division of the law center which is designed primarily to provide young attorneys in Washington with the opportunity either to broaden their intellectual horizons by taking courses which they were unable to undertake during a restricted 3-year LL.B. program or to gain expertise in the specialized fields of labor, taxation, international, or public law. The course work undertaken is not related to the performance of the interns in the courtroom with the exception of a special course in juvenile court practice and procedure. We think it desirable that they study in other fields at the same time they are developing expertise in criminal trial practice.

Each student is required to present a paper of publishable quality as a prerequisite for his degree. A particular phase of a broad research topic is assigned as the subject matter of the paper. As a result of these papers Associate Professor George W. Shadoan was able to compile and edit materials which have been published under the title, "Law and Tactics in Federal Criminal Trials." There has been a wide demand for this book at our bar since its publication last spring. This volume attempts to reproduce in textual form much of the matter which is covered in the orientation seminar. A detailed discussion of techniques of investigation in criminal cases, the law of search and

seizure, confession-suppression, pretrial motion practice, trial discovery devices, the Jencks Act, and the presentation of the insanity of defense is presented in a format where emphasis is placed on the practical aspects of criminal practice. During the present year the interns will work in conjunction with a Committee of the Junior Bar Section of the Bar Association of the District of Columbia with the object of developing a manual of standard jury instructions in criminal cases.

The interns and the director have undertaken to represent indigents in the appellate courts upon assignment or on a few occasions where an appeal has been taken by a defendant who was represented in the trial court. An increasing body of law has developed as a result of these appeals. We take particular pride in the case of Kemp v. United States. In the Kemp case a motion for judgment of acquittal was made at the close of the Government's case, at the close of all the evidence, and renewed again after conviction. All motions were denied by the trial court. The defendant was then denied leave to appeal in forma pauperis on the ground that the appeal was "frivolous and not taken in good faith." The finding was affirmed by the U.S. Court of Appeals of the District of Columbia Circuit. On petition for certiorari, the case was reversed by the Supreme Court of the United States. A subsequent hearing on the merits resulted in a reversal of conviction by the Court of Appeals in a per curiam opinion which ordered that a judgment of acquittal be entered.

A series of decisions have resulted in interpretations of the Jencks Act. One case resulted in the application of an ancient Federal statute to persons sentenced by the District of Columbia Court of General Sessions, thus prohibiting the confinement of persons in lieu of fine payment. Over 100 individuals obtained their release from confinement as a result of this decision. Another case resulted in a holding that an indigent inmate of St. Elizabeths Hospital has the right to an independent psychiatric examination in support of his petition for a writ of habeas corpus. In addition to intern-argued cases, the interns have raised a substantial number of novel points in the trial courts which have ultimately resulted in appellate opinions in cases argued by other counsel.

Some of the students have made mistakes in tactics, strategy, and ethics. When this has occurred the mistakes have been pointed out and steps have been taken to prevent repetition. In general, however, they have manifested a high level of competence and ethics and their activity has stimulated both local defense counsel and prosecutors. The Office of the U.S. Attorney has recently initiated a program for the preparation of new attorneys entering that office in appreciation of the necessity of raising their level of competence in order to meet the level of skill displayed by the interns. We have provided instruction and materials in assisting them as well.

Graduates of the program have continued to manifest deep interest in the welfare of both the indigent and the person accused of crime. Of the 30 graduates of the program, 5 have become prosecutors, 5 have served as public defenders, several are in military service. The others have gravitated to Government service or into private practice. Two who have entered private practice have been appointed by courts of their jurisdictions to represent defendants in capital cases. Two are associated with law firms which have substantial criminal practices. Several have undertaken indigency studies for their States at the request of the American Bar Association. Several have accepted positions of responsibility in local bar associations in work dealing with indigency and the administration of justice.

During this year and next year the costs of the program are being financed by a grant from the Ford Foundation. Additional financing will be necessary if the program is to continue after the Ford Foundation grant expires.

The University is not committed to the continuance of the program, though it is extremely proud of its results. We are an educational institution not a public defender organization. We initiated the internship program because we recognized a community need and felt that we could help meet this need while simultaneously obtaining educational advantages. The need for providing counsel in criminal cases has diminished as a result of the creation and strengthening of the Legal Aid Agency of the District of Columbia. We are now considering the possibility of directing the work of the internship program toward other areas where counsel are needed such as post-conviction proceedings. It is possible that during the next few years we will develop a program providing training for Legal Aid Agency staff attorneys, U.S. attorneys, and for attorneys who will man the neighborhood law clinics in which the internship principle will be continued in a different form than in the present program.

We are confident that a program such as ours can improve the level of criminal justice, produce teaching materials and methods which can be used for all students in the school, produce a substantial number of young men who are willing to enter criminal defense work, and train students to become effective trial lawyers.

We also think that our internship program suggests clear possibilities of other graduate programs keyed to the civil legal needs of the poor. However, I think it would be unwise to regard internship programs as a panacea for our problems. There are a number of factors which combine to limit the feasibility of such programs in most law schools.

In the first place, a law school has the primary obligation of teaching and research. A demonstration project such as an internship program is on the fringe of the law school's traditional functions.

Such a program is of substantial value to the community and to the extent that empirical data can be obtained from it, such a program may aid research. To the extent that teaching methods can be improved and teaching materials developed it may improve the intructional program. However, basically an internship program is designed to produce services for the needs of the poor with its educational mission restricted to the few students who participate in it and the attorneys who benefit from its publications. This gives such a program a low priority in the eyes of most deans and faculties.

Most of our law schools are small and poor. Less than one-third possess any type of graduate program and many of these are devoted primarily to providing a 4th year of law school to part-time students in courses taught by part-time professors. A few established programs have as their object the production of law teachers and research scholars. In recent years law centers in metropolitan areas such as New York University, Southern California, Georgetown, and George Washington have designed their graduate programs with the different object of providing specialized training for professional competence in particular specialties such as labor, tax, and international law. All of the graduate programs are limited by the availability of qualified faculty members, the desirability of providing smaller classes at the graduate level, and the problem of funding programs where the cost of education for each student exceeds tuition income.

There is increasing concern that any new graduate programs may result in diminishing the quality of undergraduate legal education. As a practical matter outside financial support is necessary to provide the funding of any realistic program.

Another problem is of particular importance when we speak of the possibility of internship programs keyed to the civil legal needs of the poor. An essential ingredient of such a program is a director who himself has practical experience in the areas in which the program operates. Our experience in a program oriented toward the criminal law has shown that it is not enough to find a professor who knows and understands the law. He must not only know the case law of search and seizure. He must also be able to advise a student how to draft a motion to suppress. Knowledge of the case law is only the first step. Knowledge of the personnel, policies, and practices of the courts and agencies with which he must deal is necessary to teach the intern what he must know in order to represent a client adequately. This kind of knowledge is usually gained through personal experience.

Frequently the professors in our law schools simply do not possess this practical experience. The lawyer who has expertise in the problems of the poor, who has actually been in a landlord and tenant court, who has fought out a contested domestic relations matter, or who knows local practice in a small claims court is rarely found on a law

school faculty. It is a person with this experience as well as intellectual prowess and a capacity for research who is needed if a meaningful program is to be developed. These people are hard to find. No single problem is more important in the development of a proposed internship program than the choice of a director who has this practical knowledge.

I suppose that one of the purposes of placing me on the panel is to come up with something other than a pessimistic outlook on the subject of what graduate law programs can do for the problems posed by this conference. I think that several schools of the country, with adequate financial support, are capable of establishing internship programs in the civil area.

Unlike our program where all interns are trained in the criminal law, provision should be made in a model civil program for different fields of expertise. After a general orientation period in which all interns would be acquainted with the basic legal problems commonly confronting the poor, the interns would receive different specialized instruction in different areas. Some would be trained to be experts in domestic relations, others in the criminal process, others in housing problems, others in the law, policies, and practice of public assistance programs. The practical experience would be gained by service in the office of a Legal Aid Society or in a neighborhood law clinic. The interns would bring with them real expertise in a limited area. The combined effect of several experts in different fields would provide the basis for a well-rounded law office in the areas in which they are dealing.

Individual members of a faculty could instruct in their specialties. The director would then be relieved of instructing in fields where his knowledge is only slightly greater than that of the students.

I think that such a program would reap rich dividends to a law school which undertook such a venture. Empirical data would stimulate research. The substance of some of our present courses might be reevaluated in the light of the experience of the interns.

A more ambitious program would seek to educate all interns in all of the fields in which the poor have problems. I question the wisdom of such an approach. We will be dealing with young men of little experience. With careful training in a limited area they can adequately represent a client in a contest with an adversary with greater experience. The thinner their training, the greater is the disadvantage of their inexperience.

We do not help the poor by providing them with highly motivated young men who do not know what they are doing. I would sacrifice the advantages of a general education for all in exchange for the group effect of a series of young men each of whom is expert in a specialized field.

The fact that the poor may always be with us does not diminish our responsibility to seek new devices to assist in finding solutions to problems resulting from poverty. An internship program is such a device. It can add new ideas, highly motivated, well-trained young attorneys and the resources and prestige of a university to lead in the community's attack on the legal problems of the poor. It cannot do the job alone. It may accomplish its mission within a few years and be replaced by other public supported programs which undertake to assume its responsibilities. It will have accomplished its mission if it provided leadership and resources in the crucial period when it was needed.

I sincerely hope that some of our other law schools will be persuaded to initiate internship programs geared to the civil legal needs of the poor in the near future.

Law School Curriculum Devoted to the Legal Problems of Indigents

Professor Charles E. Ares
New York University School of Law

Despite great ferment and considerable improvement, law school curricula continue to reflect the fact that the legal profession is organized around the profit system. This is not to say that lawyering is just another business, it is not. But professional though it may be, the highest rewards, professionally and materially, go to those who serve the clients able to pay the largest fees. While law schools have preached the obligations of public service, for the most part they have been content that those obligations be fulfilled incidentally to the lawyer's principal professional activity. A few of our finest schools have done a superb job of training lawyers for relatively high level jobs in government, usually the Federal Government. While involved in the public service, often preparatory to joining a major law firm, these lawyers commonly deal with large public problems, not usually with the personal legal difficulties of the slum dweller on the lower East Side of New York City, for example.

A glance at the typical curriculum of any law school illustrates the emphasis. Introduction to law, contracts, torts, property, civil procedure, constitutional law, and criminal law occupy the first year. The second year is largely more of the same—property courses, corporations, commercial transactions, some procedural courses and, in some schools, an introduction to tax law, a welcome improvement but not in an area of compelling concern to the poor. Even bankruptcy is taught in a course called "creditor's," not "debtor's" rights, and I leave to your imagination the amount of time devoted to wage earner's plans! The third year is largely elective and the available offerings reflect the lawyer's predominant concern with problems of the management, regulation, and disposition of material wealth.

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As a generalization, it may be said that only in the course in criminal law is there an opportunity to expose the student to the problems created when the law touches the poor. But unfortunately, the opportunity is usually lost because we teachers tend to concentrate on interesting, and no doubt important, problems of criminal law theory. We study the burglary, not the burglar. Furthermore, we tend to slight the problems that are really important to the alleged burglar—those of his procedural rights from arrest to trial and how are they in fact observed in our system. Such questions have in the past been squeezed out of the basic criminal law course by heavy emphasis on criminal jurisprudence; they have been relegated to an elective course in criminal procedure typically taken by a very few students. Finally, criminal law has usually fought a losing battle over time allocations with more "useful" courses. As a matter of fact, at my own school a few years back criminal law was limited to 2 semester-hours. Herculean efforts increased it to the traditional 3 and we have just this year raised it to 4. Our job now is to teach the material more realistically, which means that procedural problems, particularly the problems of the man without money, must be given much greater attention. It should be said, however, that until the profession finds a way to make a career in criminal law an attractive one, most of our efforts to nurture the first year students' interest in criminal law will fail. This, of course, is the specter that hangs over any discussion of legal representation for the poor.

In spite of an increasing emphasis on the criminal process, the civil problems of the poor in the welfare state remain substantially untouched. The challenge, and in my judgment it is one of the most difficult in legal education, is to stimulate student interest in areas of the law which the legal profession, in practice and in academia, has ignored. I wish I could report that at New York University we have found the secret of responding to that challenge. Unfortunately I cannot. What I can do is to relate our experience in trying and to discuss some of the things I think we have learned from that experience.

Our law school was one of the co-sponsors of the Manhattan Bail Project. As a part of that project we attempted to develop a seminar concerning the problems of the indigent accused. Our initial efforts were directed at acquiring an understanding of the criminal process as it exists in fact as well as in the books. The students were able to draw on their own daily experiences in the detention pens and in the lower criminal courts. They brought to the academic dialog a degree of sophistication about the criminal process not possessed by the majority of practicing lawyers. Of this phase of the seminar I think we can fairly say it was a roaring success. Very quickly, however, it became clear that we could not realistically limit our inquiries

to criminal problems. Obviously difficulties with the criminal law are only one manifestation of the dislocations of a family living in poverty. Since our students were investigating the backgrounds of these defendants they were encountering all the other dimensions of deprivation and needed to know more about them.

Thus, in the last year of the seminar we took some liberties with the course title and moved tentatively and haltingly into other aspects of urban poverty.

In the belief that we needed a systematic examination of poverty from the nonlegal as well as legal perspective, we asked the Roger Williams Straus Council on Human Relations at Princeton University to work on the seminar with us. Members of the departments of history, government, economics, psychology, and sociology and anthropology conducted a portion of the sessions and explored poverty from their respective points of view. In addition the students prepared papers on various legal problems of the poor. The papers were mimeographed and formed the basis of discussion for the remaining sessions. We met for 2 hours each week during a 14-week semester.

In my judgment the seminar had mixed success. The announcement of the seminar brought a remarkably good response from the student body. I unwisely relaxed the numerical limitation and before I could get the door closed, 26 students had enrolled. In terms of academic standing the group was very good and included nine members of the "Law Review" (one of whom is now the editor-in-chief) and three graduate students.

We suffered from the usual difficulties of any interdisciplinary seminar. I think some of the guest lecturers underestimated the sophistication of most of the students concerning economic and social problems. I think some of the students, having been trained as "doers" in law school, unreasonably expected academicians to not only describe the problems but provide the answers. I also think most of the lecturers concluded that their own thinking about these problems was too generalized. They needed to know more about the legal problems we were beginning to explore in order to better focus their presentations. In this respect, I believe I should have worked more closely with them in preparing lectures. On the whole, however, the students, all of us in fact, received valuable insights into the dimensions of the problems of poverty.

The student papers were of generally high caliber. It was our hope that the students would rely more on field research than on law in the books. But we discovered that unless firm assignments are made which force them into the field, they will be unable or unwilling to dig in as they should. The ability to do empirical research is most definitely not one of the skills a legal education provides, and this is

a significant defect in the training of a person whose whole professional existence will rest on an ability to marshal facts.

Nevertheless, some of the papers produced were imaginative and perhaps significant. One dealt with the emerging question of private institutional representation for the poor. It went well beyond an examination of legal aid societies and explored the problems faced by institutionalized neighborhood law offices. Another involved an analysis of a recent New York City Bar Association proposal concerning rent strikes. This paper, which was written by the present editor-in-chief of the "Law Review," led to a law review study of housing laws which will be published shortly. Other papers dealt with many of the more traditional problems of the indigent criminal accused such as due process in juvenile court, stop-and-frisk laws, implementation of the insanity plea, and the like.

We will continue to offer this seminar but of course one such offering in a curriculum is not enough.

From this limited experience I have formed some tentative thoughts as to how the problems of the poor can be built into the curriculum.

Happily, there are some proposed improvements in legal education of which we can take advantage. First, the typical second-year curriculum is deficient in courses built around statutory material. (The commercial courses and taxation are probably exceptions depending on how they are taught.) There seems no reason why such a course could not be based on housing codes or almost any of the various welfare statutes. Joined with this might be a different approach to administrative law, about which some have been doubtful in any event. It is argued that the real lessons to be learned here are better taught by a thorough examination of a particular agency and its administration of a specific statute. A study of the operations of the New York City Building Department or the Social Security Administration, for example, might well be fruitful from many points of view.

It is in the third-year curriculum, however, that I think real progress can be made. Here again I think we can take advantage of independent developments in legal education. Professor Walter Gellhorn of Columbia, writing in the "Journal of Legal Education," has recently proposed that the third year, sometimes described as "the year the faculty lost the pennant," be revitalized by exposing the restless student to realistic, practice-like experiences in which he is given an opportunity to function like a lawyer in the real world. Gellhorn would do this by more sophisticated problem method courses, and team taught, interdisciplinary seminars. I would add to these suggestions the proposition that the student must be given some considerable *clinical* experience and that the seminars must be built on that experience. Hypothetical problems, no matter how sophisticated, will

simply not serve. Having had a little experience with this sort of thing, I know only too well how difficult such an undertaking will be.

I think a way will have to be found to assign students to work in agencies directly concerned with the problems of the poor. This will require people in those agencies to expend time and energy making the students' experiences meaningful. Perhaps additional personnel will have to be employed to run such training programs and these activities will have to be coordinated with those of the law teacher in charge of the academic aspects of the course. There are a number of dangers here, not the least of which is that the whole thing will be reduced to on-the-job training. Scholarly inquiry, of course, must not be neglected. A sharing of experiences and an attempt to generalize ought to produce valuable insights into the workings of an agency and a statute and at the same time give the student a valuable introduction to real professional life. Surely he will be better trained to meet his responsibilities than if he spent an equivalent amount of time in a purely academic course. Surely, if the program were carefully planned and executed as a cooperative effort utilizing all the resources of a university law school and an active, functioning law office, public or private, the interests and the training of mature law students would be significantly enhanced.

I detect now a desire on the part of a significant number of law students to help make the law serve the needs of the poor. Only the techniques for meeting that desire are missing. Surely those of us responsible for legal education, working with concerned lawyers in the field, will not find it impossible to devise the methods.

SUMMARY OF DISCUSSION

The Role of the Law Schools in the Extension of Legal Services

Some law schools have recognized that the failure of the legal profession to acknowledge and deal with the legal problems of an important segment of our society may stem, in part, from lack of encouragement in the earliest stages of professional training. The programs described by the panelists represent several approaches toward establishing a more responsible trend in the academic community. However, these programs do not represent the totality of possibilities.

Goals

The discussants sought to examine the goals toward which the law school could appropriately direct its students, recognizing that its chief function should be to educate persons to be competent, ethical, informed attorneys. It should not be a community service organization or a high-priced technical school, although some aspects of these institutions may have value.

Among the more important objectives is the redirection of the career patterns of students so that some of them will find in the "poor man's law" area the potential for professional fulfillment. In addition to providing a sound educational background for this kind of practice, the school must instill in the student a sense of the importance of working in this area. The same curriculum that affects the career patterns of some can serve to sensitize many others to the significant social and economic problems of the poor and to the fact that these can be alleviated in part by legal assistance. Students, so trained, may go out into the community after graduation and may either help establish or actively support programs to provide legal services to the poor. At least, they may accord due respect and professional status to those who practice "poor man's law."

Further, the law school, by demonstration and hypothesis, can give the student a thorough grounding in the application of the canons of ethics. Observance of ethical conduct may result in an assumption of some of the burden of providing adequate representation for all. It ought at least to restrain lawyers from using legal institutions to exploit the helplessness of the poor on behalf of their clients or on behalf of the community.

The social service contribution of the law school should be encouraged. The provision of legal assistance by students, under the supervision of professors, can be a valuable asset to the community. Such programs can also teach the student interviewing, counseling, and trial techniques which will be useful to him throughout his practice.

The law school as an institution fulfills several important objectives—one of which is effecting legislative change—when it uses its prestige and its expertise to exert pressure on State legislatures to pass laws. If it would so act to bring about improved legal services for the poor, revised landlord-tenant laws, compulsory representation in *all* criminal cases, and similar legislation, it would be making a substantial contribution. Even in the absence of legislation, the law school could be a powerful force for convincing the local bar associations to set up legal service programs.

These are some of the objectives which are relevant to the proper role of a law school. There are certainly many others. A variety of methods have been and are being tried to carry out these objectives. The panelists have described two different types of clinical programs and a seminar in the problems of poverty.

A legal assistance clinic should provide a tie-in to curriculum which acquaints student lawyers with the types of problems their clients are likely to have and the causes for them. It has been suggested that the experience in the clinic could form the basis for a seminar in which actual cases are discussed not only to plan the strategy for representing the client, but as examples to illustrate the range of problems and to examine the environment which produces them. In this manner it might be possible to develop relevant curriculum materials which could be continually fortified by the experiences of each successive class.

If representation of clients in court by students is to be part of clinical training in the jurisdictions where this is allowed, faculty supervision must be particularly careful, both to instill in the student ethical concepts and proper techniques, and to protect the client from slipshod representation. Professors who run clinics have found that clients do not mind being represented by students. In fact, adequately supervised student lawyers who have volunteered for the clinic are likely to have an enthusiasm and desire to win a case that

is lacking in the average practicing lawyer who is either an assigned counsel or who ekes out a living by representing large numbers of people who can pay little. It is important to tell a client that a student will represent him. Further, it is desirable to have an attorney of record appear in court with the student.

The Role of the Legal Profession

While there is a need for more attorneys to represent the indigent and not-quite-indigent, and while law students can play a useful role in fulfilling this need, society—and the legal profession in particular—must never accept this as a permanent solution. A student may be preferable to a second rate lawyer as counsel, but should not be expected to display the competence of a first rate, experienced lawyer. The goal of equal justice for all can only be reached by giving all men access to competent, practicing attorneys.

In addition to programs for providing legal assistance, the discussants felt that the law schools need to modify their course offerings to place more emphasis on criminal law, as well as law in relation to the behavioral sciences and to the conditions of poverty. Students should be encouraged to do research in "poor man's law" areas and to write papers on unexplored topics in this field. Law journals should be urged to publish the better papers so that the fruits of these explorations will receive wide circulation among the professional community.

In one particular area, that of administrative law, much could be gained by allowing students to examine the practices and policies of agencies with which the poor deal frequently. This could be done with a view toward recommending changes which could make the agencies more responsive to the rights and privileges of the beneficiaries and more aware of their obligations and duties toward individuals. Perhaps the agencies would cooperate with an objective examination which could point out where their practices deviate from policy and where policy deviates from law, and the degree to which individuals are being injured thereby.

A few law schools are making available to their students opportunities to visit prisons, mental hospitals, juvenile courts, and other such institutions. An outgrowth of this might be the offer of summer employment to law students in these institutions or in legal aid societies, to encourage a greater understanding of their operations, their failures, and successes.

Obstacles to Progress

Whether or not a particular law school decides to include either practical programs or theoretical courses in its curriculum may depend largely on its evaluation of the relative worth of the objectives compared with what is achieved through the more traditional approach to the study of law, given the limited number of requisite

course hours for a degree. Further, the school must consider the obstacles which need to be overcome in order to carry out the amended curriculum successfully and must weigh the value of the objectives against the energy necessary to bring about the program changes.

One very practical problem is funding. Clinical programs are expensive. Additional faculty to teach other than the standard courses are also expensive. Law schools by and large receive the bulk of their money from alumni contributions. Often this is not sufficient to support the required courses, to say nothing of experimental programs. Also, the alumni are members of the bars of various communities throughout the country. They are generally conservative in their approach to law and legal institutions, and may not wish to contribute funds to a school that fosters this sort of reform. The most likely sources of funds for experiments of this kind in the future are the Federal Government or private foundations. It has been suggested that such organizations as the Ford Foundation, the National Legal Aid and Defenders Association, the Office of Economic Opportunity, the Federal court through the Criminal Justice Act, and the Department of Health, Education, and Welfare through it National Institute of Mental Health and Office of Juvenile Delinquency and Youth Development, are possible sources of funds. Also, there may be a number of small private foundations that would be interested in contributing to such projects. It was suggested that it would be helpful if a national organization such as the American Association of Law Schools would appoint a committee to look into possibilities for financing worthwhile proposals of law schools to conduct experimental programs in "poor man's law."

There are other problems to be considered. One is that courts do not cooperate to the fullest with student lawyers. Ironically, this is often more true when the students are successful than when they are unsuccessful. One eventual solution to this is patient persuasion of the judiciary by responsible faculty members. Also, the law school faculty generally will not contribute its time or its sympathy to these programs and courses because it regards them as outside the purview of the traditional purpose of a law school. This attitude on the part of the faculty tends to filter down to the students and either lessens their desire to take these courses or their ability to profit fully from them.

Another very important obstacle is the absence of materials to teach courses in this as yet uncharted field, and the absence of helpful manuals and form books for use in the clinical experience. As previously suggested, a good seminar devoted to exploring the scope of the problems and to effective methods of presenting them might be a basis for developing sound curriculum materials. Another possibility

would be a grant from a foundation to a group of experts, under the auspices of a law school, to work up appropriate instructional materials.

Beyond the more tangible hurdles of lack of money and indifferent or hostile attitudes of persons in key positions, there is the spectre of the U.S. Constitution with its not yet clearly defined requirement of counsel in criminal cases. The Supreme Court has interpreted counsel to mean adequate counsel and has left things at that point. With the hoped for increase in legal assistance clinics as adjuncts of law schools the meaning of adequate counsel is not an academic question. Can a student render adequate representation as a matter of law? Does it make a difference if the student is supervised or acts alone? What if an attorney of record appears in court with the student? If a student cannot actually go into court how much of the preparatory work can he do?

Beyond all of these considerations which may potentially interfere with the establishment and efficient operation of seminars and clinics which instruct the student in "poor man's law" there lies the problem of job placement after graduation. What happens if a school inspires a student to practice in this field and he then finds it impossible to do so because the community either cannot adequately compensate him for his work or has provided no institutional framework through which he can render the legal assistance to the poor that his law school education has trained him to give? Such a situation could result in incalculable waste. A way must be found to convince the community and the bar to make a place in the scheme of things for the practitioners of "poor man's law."

APPENDIX

Program

Conference Registrants

PROGRAM

Thursday
November 12

9:00 a.m.

OPENING SESSION
Welcome—Ellen Winston, *Commissioner of Welfare*
U.S. Department of Health, Education, and Welfare

9:30 a.m.

PANEL: THE LEGAL NEEDS OF THE POOR
Moderator: Professor Monrad Paulsen of *Columbia Law School*
1. The New Public Law: The Relation of Indigents to State Administration
Edward Sparer, *Director, Legal Services Unit Mobilization for Youth*
2. The Indigent and Welfare Administration
Elizabeth Wickenden, *Consultant, National Social Welfare Assembly*
3. Landlord-Tenant Problems
Nancy LeBlanc, *Deputy Director, Legal Services Unit Mobilization for Youth*
4. Consumer Problems
Dr. David Caplovitz, *Bureau of Applied Social Research, Columbia University*

OPEN DISCUSSION

12:15 p.m.

LUNCHEON
Speaker: The Honorable Nicholas deB. Katzenbach, *Attorney General of the United States; Chairman, President's Committee on Juvenile Delinquency*

2:15 p.m.

PANEL: NEW LEGAL SERVICES FOR ECONOMICALLY DEPRESSED METROPOLITAN AREAS: THE NEIGHBORHOOD HOUSE CONCEPT—ORGANIZATION AND ADMINISTRATION
Moderator: Junius Allison, *Executive Director, National Legal Aid and Defender Association*
1. The Need for a Neighborhood Legal Service and the New York Experience
Charles Grosser, *Deputy Director, Mobilization for Youth*
2. The Boston Neighborhood House Proposal
Williams Wells, *Action for Boston Community Development*
3. The New Haven Model
Charles Parker, *President, Legal Assistance Association, New Haven*
4. Law Governing the Practice of Law by Lay Intermediaries: Relevance to Neighborhood Legal Service Projects
Mrs. Zona F. Hostetler, *Washington attorney*
Commentator: Gary Bellow, *Consultant, United Planning Organization, Washington, D.C.* (Substitution: Edgar Cahn, *Special Assistant to the Director, Office of Economic Opportunity*)

OPEN DISCUSSION

8:00 p.m.

PANEL: FOREWARNING THE LOW-INCOME COMMUNITY OF THE MOST COMMON LEGAL DIFFICULTIES: EDUCATIONAL METHOD

Moderator: Dean Clyde C. Ferguson, *Howard University Law School*
1. The Harlem Experience
James Finney, *Director, Neighborhood Legal Services Project, Harlem*
2. The English System of Citizen's Advice Bureaus
Mildred Zucker, *James Weldon Johnson Community Center, New York*
3. Education on New York's Lower East Side
Edward Sparer, *Director, Legal Services Unit Mobilization for Youth*
4. Legal Aid Educational Practices
Junius Allison, National Legal Aid and Defender Association

OPEN DISCUSSION

Friday
November 13

9:30 a.m.

PANEL: THE LAWYER AND THE SOCIAL WORKER.
Moderator: Professor Caleb Foote, *University of Pennsylvania School of Law*
1. Cultivating Social Perspective in the Lawyer: Specific Problems
Jacob Zukerman, *Cochairman, National Conference of Lawyers and Social Workers*
2. Providing the Social Worker with Legal Understanding: Specific Need
William Downs, *Executive Director, Catholic Charities of Michigan*
3. Specific Technique for Providing Social Workers with Legal Perspective
Professor Donald Shapiro, *University of Michigan Law School*
Commentator: Louis L. Bennett, *U.S. Department of Health, Education, and Welfare*

OPEN DISCUSSION

November 13

2:00 p.m.

PANEL: THE ROLE OF LAW SCHOOLS IN THE EXTENSION OF LEGAL SERVICES
Moderator: Professor Livingston Hall, *Havard Law School*

1. The Boston University Law School Student Program
Professor Robert Spangenberg, *Boston University Law School*

2. The Georgetown Intern Program: Possibilities of Graduate Programs Keyed to the Civil Legal Needs of the Poor
Dean Kenneth Pye, *Georgetown Law Center, Washington, D.C.*

3. Law School Curriculum Devoted to the Legal Problems of Indigents
Professor Charles Ares, *New York University School of Law*

OPEN DISCUSSION

Saturday
November 14

9:00 a.m.

WORKSHOP—Moderator: Junius Allison

Neighborhood House Legal Services. Preventive Legal Education for the Low Income Community. (Open informal meeting with panelists present from Thursday afternoon and evening sessions.)

9:00 a.m.

WORKSHOP—Moderators: Dean Kenneth Pye and Prof. Howard R. Sacks

Law School Activity Related to Serving the Legal Needs of Indigents. (Open informal meeting with panelists present from Friday afternoon session.)

9:00 a.m.

WORKSHOP—Moderator: Louis L. Bennett

The Lawyer-Social Worker Relation. (Open informal meeting with panelists present from Friday morning session.)

11–12 a.m.

OPEN MEETING OF ALL CONFERENCE ATTENDEES
Presiding: Bernard Russell, *Director, Office of Juvenile Delinquency and Youth Development, Welfare Administration*
SUMMARIES OF WORKSHOPS BY WORKSHOP MODERATORS
ADJOURNMENT

REGISTERED GUESTS AND PARTICIPANTS

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